23-9

Mr Justice Catron

SUPREME COURT OF THE UNITED STATES.

No. ~~226~~ 143.

THE JEFFERSON BRANCH OF THE STATE BANK OF OHIO, AT STEUBENVILLE, PLAINTIFF IN ERROR,

vs.

ALEXANDER SKELLY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

GIDEON, Printer, 511 Ninth Street, Washington, D. C.

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GIDEON, Print.

[Petition for Writ of Error.]

To the Hon. Jacob Brinkerhoff, Chief Justice of the Supreme Court of Ohio.

The Jefferson Branch of the State Bank of Ohio, at Steubenville, by this its petition in error, represents and shows to your Honor, that manifest error, to the injury and prejudice of your petitioner, exists in the record and proceedings, as well as in the giving of judgment in the Supreme Court of Ohio, in a cause in error there lately depending and finally decided on this 8th day of November, 1860, wherein the said petitioner was the plaintiff in error, and one Alexander Skelly was the defendant in error, in a suit in error, brought by and in behalf of your petitioner against the said Alexander Skelly, to revise and correct the alleged errors in the judgment rendered in that same cause against your petitioner, and in favor of said Alexander Skelly, in the District Court of the Seventh Judicial District of the Third Judicial Circuit of the State of Ohio, at the September Term, A. D. 1860, of said Court, holden in and for the County of Perry, in said State of Ohio, in a plea of trespass, wherein your petitioner was the plaintiff, and the said Alexander Skelly was the defendant.

Your petitioner further states that, in the said suit in error in the Supreme Court of Ohio, which is the highest court of law or equity of said State of Ohio, in which a decision thereof could be had, there was drawn in question as respects your petitioner, the validity of so much of the act of the General Assembly of the State of Ohio, entitled "An Act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed April 13th, 1852, as subjected the property and effects of your petitioner, as a banking company, to the assessment and taxation, under that act, of the tax which the 2d and 3d pleas of said Alexander Skelly to your petitioner's declaration allege and aver was assessed against the property of your petitioner as a banking company, and levied by distress on the moneys of your petitioner in satisfaction of said tax.

The validity of so much of said act was thus called in question by your petitioner, on the alleged ground and claim that, so far as respects your petitioner, the said Act of the 13th of April, 1852, was repugnant to and in direct violation of the 60th section of the Act of the General Assembly of the State of Ohio, entitled "An Act to incorporate the State Bank of Ohio, and other Banking Companies," passed February 24th, 1845, under which last-named act your petitioner was and still is organized as a banking company.

And it was alleged and claimed by your petitioner in that cause,

as the record and proceedings therein show, that the said 60th section is a contract between the State of Ohio and your petitioner as such banking company, to the following substance and effect, that the said banking company should semi-annually, on the days designated in said last-named act, for declaring dividends, set off to the State of Ohio, six per centum on the profits, deducting therefrom the expenses and ascertained losses of the company for the six months next preceding, to be paid over to the Treasurer of State by the cashier of said banking company, on the order of the Auditor of State, which sum or amount so set off to be in lieu of all taxes to which such company, or the stockholders thereof, on account of stock owned therein, would otherwise be subject; and it was alleged and claimed by your petitioner, that said 60th section being such contract, so much of the said Act of the 13th of April, 1852, as authorized and directed the assessment and collection of the tax specified and set forth in the said 2d and 3d pleas of the said Alexander Skelly, was invalid, as being repugnant to that clause of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of contracts; and your petitioner further states, that the decision of the Supreme Court of Ohio in said suit in error, was in favor of the validity of so much of said act of the 13th of April, 1852, as subjected your petitioner, as such banking company, to the tax which said 2d and 3d pleas show was assessed against and levied upon your petitioner, which decision was made upon the ground, and for the reason that, in the opinion and judgment of said court, the said 60th section of said act of the 24th of February, 1845, is not a contract between said State of Ohio and your petitioner as such banking company, and, as such, protected by the Constitution of the United States, as was claimed and alleged by your petitioner. All which matters hereinbefore stated appear of record in said suit in error. And your petitioner further states that said decision of the Supreme Court of Ohio was a final decision of said cause.

And your petitioner complains and shows for error, that the decision of said Supreme Court of Ohio, affirming the validity, as aforesaid, of said Act of the 13th of April, 1852, and adjudging that the said 60th section of said Act of the 24th of February, 1845, was not a contract which was entitled to the protection of the Constitution of the United States, was erroneous in both its parts, and to the manifest injury of your petitioner.

And your petitioner, for the matters herein above set forth and alleged, prays your Honors to allow a writ of error to bring the said cause, for the errors aforesaid, into the Supreme Court of the United States, for revision of said judgment of said Supreme Court of Ohio, and that the record and proceedings in said suit in error being inspected, the said Supreme Court of the United States, sit-

ting as a court for the correction of those errors, may cause to be done what of right and according to the laws and customs of the United States, should be done in the premises.

S. F. VINTON,
Att'y for the Jefferson Branch of the
State Bank of Ohio at Steubenville.

"I allow a writ of error as prayed for in the within petition. Columbus, Ohio, November 8th, 1860.

JACOB BRINKERHOFF,
Chief Justice of Ohio."

UNITED STATES OF AMERICA, }
Southern District of Ohio, } ss.

I, John McLean, Jr., Clerk of the United States Court within and for said District, do hereby certify the foregoing to be a true and accurate copy of a *petition for a writ of error*, and the *allowance thereof*, as the same remains on file in my office.

In witness whereof I have hereunto set my hand, and affixed the seal of said Court, this 9th day of November, 1860, and in the 85th year of the Independence of the United States of America.

Attest: JOHN McLEAN, Jr.,
Clerk U. S. Court Southern Dist. of Ohio.

THE STATE OF OHIO, ss.

I, James H. Smith, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing is a true copy of a "Copy of petition for writ of error and allowance thereof," and of the certificate of the Clerk of the U. S. Court for the Southern District of Ohio, thereto attached, as filed in the Clerk's Office of said Supreme Court of Ohio, on the 10th day of November, A. D. 1860, by the said plaintiff in error.

In testimony whereof I hereunto subscribe my name, and affix the seal of said Court, at the city of Columbus, this 1st day of January, A. D. 1861.

JAMES H. SMITH,
Clerk Supreme Court of Ohio.
By H. S. MILLER, Dep.

Copy of Bond.

Know all men by these presents, that we, John Andrews, Abner L. Andrews, and Robert C. Hull, are held and firmly bound unto Alexander Skelly in the full and just sum of five hundred dollars, to be paid to the said Alexander Skelly, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this tenth day of November, A. D. 1860.

Whereas, lately, at a Supreme Court of the State of Ohio, in a suit depending in said Court between the Jefferson Branch of the State Bank of Ohio, at Steubenville, plaintiff in error in that suit, and Alexander Skelly, the defendant in error, judgment was rendered against the said plaintiff in error, and the said plaintiff in error having obtained a writ of error to bring said judgment into the Supreme Court of the United States, for the correction of errors in that judgment alleged to exist, and filed a copy of said writ of error in the clerk's office of said Supreme Court of Ohio, and a citation directed to the said Alexander Skelly, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the fourth Monday of December next:

Now, the condition of the above obligation is such, that if the said Jefferson Branch of the State Bank of Ohio, at Steubenville, shall prosecute said writ of error to effect, and answer all damages and costs if the said Jefferson Branch of the State Bank of Ohio, at Steubenville, fail to make good their said plea, then the above obligation to be void, else to remain in full force and virtue.

J. ANDREWS, [SEAL.]
A. L. ANDREWS, [SEAL.]
R. C. HULL, [SEAL.]

Sealed and delivered in presence of
JOHN J. JANNEY,
B. C. CONVERSE.

The above bond is approved by me, this 10th of November, A. D. 1860.

JACOB BRINKERHOFF,
C. J. Sup. Court of Ohio.

I, James H. Smith, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing is a true copy of the original bond on file in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said Court, at Columbus, this 10th day of November, A. D. 1860.

JAS. H. SMITH, Clerk S. C.
By H. S. MILLER, Dep.

[Citation.]

THE UNITED STATES OF AMERICA,

To Alexander Skelly, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the fourth Monday of December next, to answer to a writ of error filed in the Clerk's office of the Supreme Court of the State of Ohio, at Columbus, Ohio, wherein the Jefferson Branch of the State Bank of Ohio, at Steubenville, is the plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jacob Brinkerhoff, Chief Justice of the Supreme Court of Ohio, this tenth day of November, in the year of our Lord one thousand eight hundred and sixty.

JACOB BRINKHERHOFF,
Chief Justice of the Supreme Court of Ohio.

STATE OF OHIO,

Jefferson County, *ss.*

On this 13th day of November, A. D. 1860, personally appeared Thomas Miller, before me the subscriber, an acting Justice of the Peace within and for said County of Jefferson, and makes oath that he delivered on this day to Alexander Skelly a true copy of the within citation.

THOS. MILLER.

Sworn to before me, the day and year first above mentioned.

JAMES MCKERWAY,
Justice of the Peace.

[Writ of Error.]

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Supreme Court of Ohio, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Ohio, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Jefferson Branch of the State Bank of Ohio, at Steubenville, plaintiff in error, and Alexander Skelly, defendant in error in that suit, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and

the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Jefferson Branch of the State Bank of Ohio, at Steubenville, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Attest,

JNO. McLEAN, JR.,
Clerk, &c., Circuit Court U. S., Southern District of Ohio.

Answer of the Judges of the Supreme Court of Ohio to the Honorable the Judges of the Supreme Court of the United States.

In compliance with the command of the foregoing writ, I herewith return an authenticated transcript of the judgments and all things concerning the same, as they appear of record in our said Court.

Attest,

JAS. H. SMITH,
Clerk Supreme Court of Ohio.
By H. S. MILER,
Deputy.

THE STATE OF OHIO, *ss.*

At a Term of the Supreme Court of the State of Ohio, continued and held at the court-room of the Capitol in the City of Columbus, before the Honorable Jacob Brinkerhoff, Chief Justice, and Josiah Scott, Milton Sutliff, William V. Peck, and William Y. Gholson, Judges, on the eighth day of November, in the year of our Lord one thousand eight hundred and sixty, there were, among others, the following proceedings, to wit:

The Jefferson Branch of the State Bank of Ohio, at Steubenville, *vs.* Alexander Skelly.	In Error to District Court, Perry County.

Be it remembered, that, heretofore, to wit, on the sixth day of September, in the year of our Lord one thousand eight hundred and sixty, came the said plaintiff in error, by S. F. Vinton, Esq., and filed in the clerk's office of said Supreme Court a transcript of the record in a certain case, wherein the said The Jefferson Branch of the State Bank of Ohio, at Steubenville, was plaintiff, and the said Alexander Skelly was defendant; which said transcript, with the petition in error thereto attached, with leave thereon to file the same, reads, in the words and figures following, to wit:

The Jefferson Branch of the State Bank of Ohio, at Steubenville, *vs.* Alexander Skelly.	Sent from the District Court of Jefferson County.

THE STATE OF OHIO,
Perry County, *ss.*

Pleas at the court house, in New Lexington, in said County of Perry, on the third day of September, A. D. 1860, before the Honorable Henry C. Whitman, W. W. Johnson, and Simeon Nash, Judges of the Seventh District of the Courts of Common Pleas, in said State of Ohio, setting as a District Court:

Be it remembered, that, heretofore, to wit, on the 12th day of April, 1853, a writ of summons issued from the Court of Common Pleas of Jefferson county, which, with the endorsement and sheriff's return thereon, read in the words and figures following, to wit:

THE STATE OF OHIO,
Jefferson County, *ss.*

To the Sheriff of said County of Jefferson, greeting:

We command you to summon Alexander Skelly, if he be found in your county, to appear forthwith before the Court of Common Pleas of the County of Jefferson, now in session at the court house in Steubenville, to answer unto the Jefferson Branch of the State Bank of Ohio, at Steubenville, in a plea of trespass to the damage

of the said plaintiff of seven thousand dollars, as it says. Hereof fail not, but of this writ and your service, make due return.

Witness my signature, and the seal of our said Court of Common Pleas at Steubenville, this 12th day of April, A. D. 1853. GEO. WEBSTER, Clerk.

[Endorsement.]

Suit brought to recover damages for the taking and carrying away, by defendant, certain coin of gold of great value, the property of the plaintiff.

[Sheriff's Return.]

I served the command of this writ April 13, 1853, by leaving a true copy of the same with the within named defendant.

MOSES DILLON, Sheriff.

Fees, 55 cts.

And afterwards, to wit, on the 5th day of July, 1853, the said plaintiff, by its attorney, filed in the clerk's office of the Court of Common Pleas for Jefferson County aforesaid, its declaration, which reads as follows, to wit:

[Declaration.]

STATE OF OHIO,
Jefferson County, *ss.*

Court of Common Pleas, of the Term of May, A. D. 1853.

The Jefferson Branch of the State Bank of Ohio, at Steubenville, which is a body corporate, incorporated and authorized to carry on, under the name and style of the Jefferson Branch of the State Bank of Ohio, at Steubenville, the business of banking as a branch of the State Bank of Ohio, at the town of Steubenville, in the County of Jefferson, and State of Ohio, under the authority and by virtue of the provisions of an act of the General Assembly of the State of Ohio, entitled "An Act to incorporate the State Bank of Ohio, and other Banking Companies," passed February 24th, 1845, complains of Alexander Skelly of a plea of trespass, for that the said Alexander Skelly, on the 15th day of March, A. D. 1853, at said town of Steubenville, with force and arms, took and carried away from the banking-house of said Jefferson Branch of the State Bank of Ohio, at Steubenville, the goods and chattels of said Jefferson Branch of the State Bank of Ohio, at Steubenville, then and there being found, to wit, three bags containing current gold coin of the United States, of great value, to wit, of the value of six thousand dollars; also, two hundred and eighty pieces of the current gold coin of the United States, commonly called double eagles, of the value of twenty dollars each; also, five hundred and sixty pieces of the current gold coin of the United States,

commonly called eagles, of the value of ten dollars each; also, eleven hundred and fifty pieces of the current gold coin of the United States, commonly called half-eagles, of the value of five dollars each; also, two thousand three hundred pieces of the current gold coin of the United States, commonly called quarter-eagles, of the value of two dollars and fifty cents each; also, five thousand five hundred and sixty-eight pieces of the current gold coin of the United States, commonly called gold dollars, of the value of one dollar each, and then and there converted the same to his own use, against the peace, and to the damage of the said plaintiff, seven thousand dollars, and thereupon the said Jefferson Branch of the State Bank of Ohio, at Steubenville, sues, &c.

COLLIER & VINTON,
Attorneys for Plaintiff.

And afterwards, to wit, at the September Term, 1853, of said Court of Common Pleas, for said Jefferson County, on motion, leave was given the defendant to plead, and cause continued.

And afterwards, to wit, at the February and May Terms of said Jefferson County Court of Common Pleas, 1854, this cause was continued.

And afterwards, to wit, at the October Term, 1854, of said Jefferson County Court of Common Pleas, on motion, leave was given to the defendant to plead, and cause continued.

And afterwards, to wit, at the February Term of said Jefferson County Court, 1855, on motion to the court, leave is given the defendant to plead in thirty days, and this cause is continued.

And thereupon afterwards, to wit, on the 21st day of April, 1855, the said defendant, by his attorney, filed in the Court of Common Pleas of said Jefferson County, his pleas, which read as follows, viz:

[Plea.]

THE STATE OF OHIO,
Jefferson County, *ss.*

Court of Common Pleas, to May Term, 1855. In Trespass.

Alexander Skelly, by George W. McCook, his attorney, comes and defends, &c., and says he is not guilty of the said trespass in the said declaration alleged, and of this he puts himself upon the country, &c., and the plaintiff doth the like.

By GEORGE W. McCOOK, his Attorney.

And, for a further plea in this behalf, leave of the court for that purpose being first had and obtained, the said defendant comes and

says, that the plaintiff, its action aforesaid against him ought not to have and maintain, because he says that, on the fifteenth day of September, in the year eighteen hundred and fifty-two, the duplicate of taxes assessed in the County of Jefferson, in said State of Ohio, were, by the auditor of said county, in pursuance of law, placed in the hands of the defendant, then and there being the treasurer of said county, duly commissioned as such, for collection.

That upon said duplicates there was entered an assessment against the plaintiff for taxes, a large sum of money, to wit, the sum of $5,303 70 cents and 4 mills. And the said defendant avers that the said taxes remained unpaid until after the twentieth day of December, in the year eighteen hundred and fifty-two, and that said taxes so assessed as aforesaid, still remained unpaid; and the said defendant still continuing to be the treasurer of said county, it became, and was the duty of said defendant to collect the same by distraint. And he did, afterwards, to wit, on the fifteenth day of March, in the year 1853, at said county, as such treasurer, seize, take, and carry away the moneys of the plaintiff to a large amount, to wit, the sum of $5,568 88.9, being the taxes so as aforesaid assessed against the plaintiff upon said duplicate so in his hands as such treasurer, together with five per centum penalty thereon, as he lawfully might do, and which are the same supposed trespasses in the said declaration of the plaintiff mentioned, and this he is ready to verify. Wherefore, he prays judgment if the said plaintiff her action aforesaid against him ought to have or maintain.

By GEORGE W. McCOOK, his Attorney.

And for a further plea in this behalf, leave of the court for that purpose being first had and obtained, the said defendant says that, by reason of any thing in the plaintiff's declaration contained, the plaintiff ought not to have or maintain the action aforesaid against him, because, he says, that on the fifteenth day of March, in the year 1853, at said county, he was, and from the first Monday in June, in the year 1852, had been the treasurer of said County of Jefferson, duly elected, commissioned and qualified, and that as such treasurer, therefore, to wit, on the fifteenth day of September, in the year 1852, the duplicate of taxes for said year, in the said county of Jefferson, was, pursuant to the statute in such case made and provided, placed in the hands of the defendant, as such treasurer, by the auditor of said county, and the defendant then and there was, by law, charged with the collection of the taxes upon said duplicate.

And the said defendant further alleges, that upon the said duplicate the plaintiff, then and there being a company carrying on the business of banking, was charged and assessed with taxes, as follows, that is to say,

Owners' Names.	Value.	State, County, &c., Taxes.
Jefferson Branch of State Bank.	$321,762 00 00	$2.574 09 06
Township and Poor Tax.	Borough, Railroad, &c., Taxes.	Township Railroad Tax.
$193 05 07	$1,930 57 02	$450 46 06
Road Tax.	Delinquent School Tax.	Total Taxes.
$25 81 03	$128 70 00	$5,303 37 04

And the defendant, as such treasurer, became and was charged with the collection of the taxes so assessed.

And the defendant further alleges, that the plaintiff did not, on or before the twentieth day of December, in the year 1852, pay to the defendant as such treasurer, the taxes so as aforesaid assessed and charged against the plaintiff on said duplicate, but wholly neglected and refused so to do, and it thereupon became and was by law the duty of the defendant, as such treasurer, to proceed to collect the same by destraining the property of the plaintiff for that purpose.

And the defendant further alleges, that afterwards, to wit: on the fifteenth day of March, in the year 1853, at said county, as such treasurer, and still having possession of the duplicate aforesaid, and charged with the collection of the same, he did, in pursuance of law and in execution of his duty, proceed to enforce the collection of said taxes by distraint, and did then and there seize, take, and carry away certain gold coins of the value of five thousand five hundred and sixty-eight dollars and eighty-eight cents and nine mills, of the property of the plaintiff, doing to the plaintiff then and there no unnecessary damage, for the purpose of making the taxes as aforesaid, being the said sum of $5,303 70 and four mills, so as aforesaid assessed for taxes, and five per centum penalty thereon, and did then and there place the taxes so distrained and collected in the treasury of said county, as he lawfully might do, which are the same supposed trespasses whereof the plaintiff in his declaration aforesaid hath above thereof complained against the defendant, and this he is ready to verify, wherefore he prays judgment if the plaintiff his action aforesaid against him ought to have or maintain, &c.

BY GEO. W. McCOOK, his Att'y.

And afterwards, to wit: On the 21st day of May, 1855, the said plaintiff, by its attorney, filed in the Court of Common Pleas for Jefferson county aforesaid, its replication, which reads as follows, to wit:

And the said plaintiff, as to the plea of the said Alexander Skelly,

by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

S. F. VINTON,
D. L. COLLIER,
Plaintiff's Attorneys.

And the said plaintiff, as to the said plea of the said Skelly, by him secondly and thirdly above pleaded, as to the said several trespasses in said plea mentioned, and therein attempted to be justified, saith, that the said plaintiff, by reason of anything by the said Skelly in said several pleas alleged, ought not to be barred from having and maintaining his aforesaid action thereof against said Skelly, because she saith that the Jefferson branch of the State Bank of Ohio, at Steubenville, prior to the first day of January, A. D. 1850, became and was duly incorporated and organized as a body corporate and banking company, under and in conformity with the provisions of an act of the General Assembly of the State of Ohio, entitled, "an act to incorporate the State Bank of Ohio, and other banking companies," passed February 24, 1845, and being so organized, said branch bank accepted the provisions of said act, and assumed the corporate name aforesaid, and from thence hitherto has carried on the business of banking at the City of Steubenville, and still continues to do so. That said branch bank, at all times since its organization as aforesaid, has regularly and punctually, semi-annually, on the first Monday of May and November, each and every year, as required and designated in the 60th section of said act for declaring dividends, set off to the State of Ohio six per centum on the profits, deducting therefrom the expenses and ascertained losses of said bank for the six months next preceding, and that the cashier of said bank regularly and punctually, within ten days after setting off six per centum to the State of the profits as aforesaid, informed the Auditor of State of the amount so set off, and at all times when thereto required, hath paid the amount so set off to the Treasurer of State, on the order of the Auditor of the State, and so far as the same hath not been drawn for by said Auditor, said bank is ready and willing, and desirous to pay the same whenever and so soon as the order of the Auditor of State therefor to the Treasurer of State shall be presented, or the same otherwise demanded according to law. And the said Branch Bank further saith, that said bank, on the first Monday, being the 3d day of May, A. D. 1852, set off to the State as aforesaid, the sum of five hundred and fifty dollars and thirty-seven cents, ($550 37,) being six per centum on the profits, deducting therefrom the expenses and ascertained losses of said branch bank for the six months next preceding the day last aforesaid, and that said bank, by her cashier, within ten days thereafter, to wit: on the 6th day of May, A. D. 1852, notified the Auditor of the State of Ohio of the amount

so set off as aforesaid to said State. And afterwards, to wit: on the first Monday, being the 1st day of November, A. D. 1852, the said branch bank set off to the State as aforesaid the sum of five hundred and eleven dollars and thirteen cents, being six per centum on the profits, deducting therefrom the expenses and ascertained losses of said branch bank for the six months next preceding the day last aforesaid, and that said bank, by her cashier, within ten days thereafter, to wit: on the 4th day of November, 1852, notified the Auditor of State of the State of Ohio, of the amount so set off as aforesaid to said State. And the said branch bank further saith that she has, at all times, been ready, willing, and desirous to pay said several sums of money so set apart to State of Ohio, to the Treasurer or the order of the Auditor, whenever presented, and that the funds necessary for that purpose have been, and still are kept and held ready, at all times to be paid over. And the said bank further saith, that she has in good faith fulfilled and performed all the duties and requirements of said 59th and 60th sections of said act of Assembly, and by her acceptance thereof and compliance with its provisions as hereinbefore set forth, a contract arose and was made between the State of Ohio and said bank, in substance and to the effect according to the provisions of the 60th section of said act, to wit: that the said six per centum on the profits so to be divided semi-annually as aforesaid, and set apart to the State, should be in lieu of all taxes to which said bank or the stockholders thereof, on account of stock owned therein, would otherwise be subject. And that said contract so made is co-extensive in point of time with the duration of the corporate existence of said bank under said act, which is limited to the first day of May, A. D. 1866, not subject to be annulled or otherwise repealed or canceled, except by the consent of the parties to said contract. And the said plaintiff further saith, that the said assessments and distraints for taxes, as set forth in said several pleas, was upon the notes and bills discounted and purchased, and all other moneys, effects, or dues of every description belonging to said branch bank, loaned, invested, or otherwise used or employed with a view to profit, or upon which said bank receives or is entitled to receive interest, and is in direct violation of said contract as above set forth, and in conflict with the provisions of the act under and by virtue of which the said Jefferson Branch became incorporated, as above specified, and this the said plaintiff is ready to verify. Wherefore, the said plaintiff prays judgment and her damages by her sustained, by reason of said trespasses to be adjudged to the said plaintiff.

By VINTON & COLLIER, Att'ys.

And on the same, 21st day of May, 1855, the said defendant, by his attorney, filed in said Jefferson County Court of Common Pleas his rejoinder, which reads as follows, to wit:

[Rejoinder.]

And the said Alexander Skelly, as to the replication of the plaintiff to the pleas of the defendant, by him secondly and thirdly above pleaded, comes and says, that by reason of any thing in that replication contained, the plaintiff ought not to have or maintain her action aforesaid against the defendant, because he says that the said plaintiff has not in good faith fulfilled and performed all the duties and requirements of the sixtieth section of the act in the said plaintiff's application mentioned, and of this the defendant puts himself upon the country, and the plaintiff doth the like.

By STANTON & McCOOK, his Attorneys.

[Leave to amend Petition.]

And afterwards, to wit, at the May Term of the Court of Common Pleas of said Jefferson county, on motion, leave was given to the plaintiff to file an amended petition. And the parties appear by their attorneys, and are at issue to the country, and thereupon came a jury, to wit:

[Jury.]

James Vaughan, Alexander Meikle, Daniel Black, Robert Martin, William Powell, Jacob Baxter, John P. Wade, George W. Dungan, William Karr, Henry P. Wolcott, Timothy McCarty, and David Myers, who being duly empannelled and sworn, and having

[Verdict.]

heard the evidence, for verdict do say, that they find the issues to be in favor of said plaintiff, and that said plaintiff has sustained damages by reason of the premises to six thousand two hundred and ninety-

[Judgment.]

two dollars and eighty cents. It is considered by the Court that the plaintiff recover of the defendant the sum of six thousand two hundred and ninety-two dollars and eighty cents, by the jury aforesaid assessed, and also its costs of suit, taxed at $41 47.

Thereupon the defendant presented to the Court his bill of exceptions, which was signed and sealed by the Court, and ordered to be made a part of the record in this case.

[Notice of Appeal.]

Thereupon, defendant gave notice of appeal to the District Court.

And afterwards, to wit, at a District Court of the Eighth Judicial District of the Fourth Judicial Circuit of the State of Ohio, holden in and for the County of Jefferson, on the 10th day of August, A. D. 1855, by the Honorable William Kennon, Charles C. Cenouse, Robert J. Alexander, and Thomas Means, Judges of said Court, the

above-named cause being pending and undecided in said Court for said county, and it appearing that the three last-named judges are interested in the event of said suit, the same is on motion of the

[Remove to 7th District of 3d Circuit.]

counsel for the plaintiff, hereby ordered to be removed to the District Court of the Seventh Judicial District of the Third Judicial Circuit of the State of Ohio, next to be holden by said District Court in and for the County of Perry, and the same is continued to the next term of said District Court in and for said County of Perry.

And now, at this day, to wit, at a District Court holden in and for said County of Perry, before the judges aforesaid, and at the time and place first herein mentioned, came the said plaintiff by Messrs. Vinton and Collier, their attorneys, and the defendant by himself, or counsel failing to appear, and though called, came not, but made default of appearance, and thereupon upon the motion of the

[Jury.]

plaintiff's counsel and order of the Court, came a jury, to wit, Israel Moore, R. N. Moore, Josiah Defenbaugh, John Clum, Levi Nixon, Morris Smith, John Adams, Joseph Clayton, Jacob Poorman, Merdecai Yarnell, Simon Ortman, and Samuel Middagh, who being empannelled and sworn the truth to speak upon the several issues joined between the parties, upon their oath do say, upon the issue of

[Verdict.]

not guilty, first therein joined between them, that the said Alexander Skelly is guilty of the trespass in manner and form, as the said plaintiffs have in their said declaration complained against him. And upon the issue joined between said parties that the said plaintiff had not in good faith fulfilled and performed all the duties and requirements of the 59th and 60th sections of the act in said plaintiff's replication mentioned, do find that the said Jefferson Branch of the State Bank of Ohio, at Steubenville, hath in good faith fulfilled and performed all the the duties and requirements of the said 59th and 60th sections of said act in plaintiff's replication mentioned. And the jury do further find and assess the damages of the said plaintiff by them sustained, by reason of the trespass aforesaid, at the sum of six thousand three hundred and ninety dollars and eighty-eight cents.

[Judgment.]

It is therefore considered, that the said plaintiff recover of the said defendant said sum of $6,390 88, the damages aforesaid, and the costs herein expended, taxed at $. On motion of the plaintiff's attorney, it is ordered by the Court that a certified

copy of the final judgment and proceedings rendered in this case be furnished to the said plaintiff, to be presented to the Clerk of the Court of the County of Jefferson, from which this cause was reserved.

[Motion in Arrest.]

And thereupon the defendant filed his motion in arrest of judgment as follows, to wit:

And now comes the defendant and moves the Court to arrest the judgment in this cause, for the reasons following, to wit:

First. That the Court have no jurisdiction to try this cause.

Second. That the District Court for Jefferson county had no power to order this cause to be removed to Perry county.

Third. That the County of Perry is not the nearest county to the County of Jefferson, or an adjacent district.

By G. W. McCOOK, and
R. S. MOODY, his Counsel.

Which motion came on to be heard and was argued by counsel, on consideration whereof the Court do overrule said motion, and thereupon the defendant tendered to the Court his two several bills of exceptions in this cause, which are signed, sealed, and ordered to be made a part of the record in this cause, which said bills of exception read as follows, to wit:

[First Bill of Exceptions.]

Be it remembered, that on the trial of this cause to the jury upon the issue joined, the plaintiff, in order to maintain the issue on its part, proved that the plaintiff, on the 4th of September, A. D. 1845, became regularly incorporated and commenced the business of banking, under the provisions of the act of the General Assembly of the State of Ohio, passed February 24th, 1845, as a branch of the State Bank of Ohio, and that it has continued to the present time to use and enjoy its corporate franchises; the plaintiff then called its cashier, William Spencer, who testified that on the first Monday of May, 1852, a dividend for the first six months was made, the profits for the six months preceding were ascertained, and six per centum on the amount having been computed, the said six per centum, amounting to $\$550\ \frac{37}{100}$, was placed to the credit of the State by entering the amount on a general account kept in a ledger in the bank, called State taxes, which account is by bankers denominated a deposit account, and within ten days thereafter, that he, as cashier of said bank, informed the Auditor of State by letter, thereof, a copy of which, marked A, is hereto annexed. But that the sum so ascertained was not separated from the general fund of the bank, but remained parcel thereof, and that it was not set off or designated by any means whatever, except by the entry of the sum in that

account, and that said account was like all other accounts kept in said bank with the general creditors thereof, and was at all times subject to the draft of the Auditor of State, and which said bank has been at all times ready and prepared to pay on such order of said Auditor. That on the first Monday of November, 1852, the plaintiff's directory declared another dividend, and at the time of so doing, ascertained the profits for six months preceding, and having computed six per centum thereon, placed the same to the credit of the same account, in like manner as in the month of May as hereinbefore stated, and not otherwise or differently, and that within ten days witness notified the Auditor of State thereof, as required by law by letter, a copy of which, marked B, is hereunto annexed. That said sums remained in bank, never having been drawn for by the said Auditor, and that six per cent. on the profits of the bank, deducting expenses and ascertained losses for the six months next preceding, was, on the first Monday of May and November of each year prior to 1852, carried to the credit of the State in said account, and the State Auditor was in each instance, within ten days thereafter, notified thereof, and the same was paid on the order of said Auditor. That in March 1853, the defendant entered the banking house of the plaintiff, and the vault therein, and seized two bags of gold, against the will of the plaintiff and the protest of the witness as its cashier, the property of the plaintiff, and counted out and carried away the sum of $5,568 88.9, claiming the same to be due for taxes. And thereupon the plaintiff having offered no further evidence, rested his case.

The defendant thereupon, to maintain the issue on his part, gave in evidence the following return, made by the officers of the plaintiff, to the Auditor of said County of Jefferson:

The undersigned, President and Cashier of the Jefferson Branch of the State Bank of Ohio, at Steubenville, incorporated by the laws of the State of Ohio, having the right to issue bills for circulation as money, make out and return under oath, according to the provisions of an act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money:

First. The average amounts of notes and bills discounted by said branch bank during the past year, at the sum of, for bills and notes, - - - - - - $283,866 68

Safety fund invested, - - - - 18,525 93

$302,392 61

Second. The average amount of all other moneys, effects, or dues of every description belonging to

Amount carried forward, - - - $302,392 61

Amount brought forward, - - -	$302,392 61
said branch bank, loaned, invested, or otherwise used or employed with a view to profit, or upon which said branch receives or is entitled to receive interest, - - - - - -	$19,369 39
Amount, - - - - -	$321,762 00

STATE OF OHIO, Jefferson County, ss.

We, John Andrews, President, and William Spencer, Cashier, of the Jefferson Branch of the State Bank of Ohio, at Steubenville, do solemnly swear that the above statement contains a true list of all the items of property required to be listed by us as officers of said branch bank, by the act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money, as we verily believe.

JOHN ANDREWS, President.
W. SPENCER, Cashier.

Sworn to and subscribed before me, this 29th day of May, 1852. Witness my hand and official seal.

[SEAL.] MARTIN ANDREWS,
Notary Public.

At a meeting of the Directors of the Jefferson Branch of the State Bank of Ohio, at Steubenville, held at their banking-house, Friday, May 28, 1852, it was ordered that the following resolution be attached to and made part of the return of this branch under the tax law passed April 13, 1852, viz:

Resolved, That, in the opinion of the directors of the Jefferson Branch of the State Bank of Ohio, at Steubenville, that the act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money, passed April 13, 1852, so far as it imposes a tax upon this banking company, or the listing or valuing of its property different from that required by its charter, without the consent of the corporators, is unconstitutional and void, and is also repugnant to the constitution of Ohio, which declares that laws shall be passed taxing, by uniform rule, all investments in stock or otherwise, and that property employed in banking shall bear a burden of taxation equal to that imposed on the property of individuals; and again, that the property of corporations now existing, or hereafter created, shall forever be subject to taxation the same as property of individuals, and therefore creates no liability against this bank; and that this branch will not, as at present advised, pay such additional tax, unless compelled by law, and hereby enters its protest against its imposition and collection.

Resolved, That the cashier attach a copy of these resolutions, signed by the President and Cashier of this bank, to the return of this bank made under said law; also, file a copy so attested with the treasurer of this county, and transmit a like copy to the Auditor of State, as an evidence of the dissent of this branch from all the provisions of said law, and its determination to rely upon the constitution and legal rights of the bank under its charter.

JNO. ANDREWS, President.
W. SPENCER, Cashier.

May 28, 1852.

And it was further proved by the defendant, that after the making of said return, and before the 15th of September, 1852, the duplicate of taxes for Jefferson county was made out, and upon the said duplicate the plaintiff was assessed with the sum of $5,303 70 for taxes for the year 1852, and that the entry of said assessment, as set out in the plea of the defendant, is a correct copy from the duplicate, and that said duplicate, duly certified, was delivered to the defendant for collection, who then, and up to the bringing of this suit, was treasurer of Jefferson county, duly commissioned and qualified.

That after the time limited for the payment of taxes to treasurer had expired, the plaintiff having wholly neglected and refused to pay the taxes upon the duplicate, the defendant, as such treasurer, and having the said duplicate in his possession, peaceably entered the outer door of the banking-house of the plaintiff, and the vault therein, and so having entered, seized the gold in the manner detailed in the plaintiff's proof, and against the will and contrary to the protest of the plaintiff's cashier, carred away said sum of $5,568 88.9, being the amount of taxes and penalty, but not in excess thereof, and doing no unnecessary damage, and this was the same alleged trespass complained of by the plaintiff.

And thereupon, no further evidence having been given on either side, the court charged the jury that the act, so far as the same relates to taxation of banks, under which the said taxes were assessed, was unconstitutional, and therefore the duplicate could afford no protection to the defendant. That the proof made by the plaintiff constituted a compliance with the 60th section of the law under which the plaintiff was organized in respect to taxes, and if the jury believed the testimony given, the plaintiff is entitled to a verdict. To which charge the defendant excepted, and prayed the court that this his bill of exceptions may be signed, sealed, and made part of the record in this cause, which is done accordingly.

H. C. WHITMAN, [SEAL.]
W. V. PECK, [SEAL.]
SIMEON NASH, [SEAL.]

[Exhibit A.]

Jefferson Br. St. Bk. of Ohio, Steubenville, May 6, 1852.

W. D. Morgan, Esq., Auditor of State.

I enclose herewith the quarterly report of this branch, and have set apart $550 37 tax on the profits for the last six months, subject to your order. Respectfully,

W. SPENCER, Cashier.

[Exhibit B.]

Jefferson Br. St. Bk. of Ohio, Steubenville, Nov. 4, 1852.

W. D. Morgan, Esq., Auditor, &c.

Dear Sir: I enclose herewith the quarterly report of the bank, and have set apart $511 13 tax on the profits for the last six months, subject to your order.

Respectfully,

W. SPENCER, Cashier.

[Second Bill of Exceptions.]

Be it remembered, that on the trial of this cause, and after the verdict of the jury herein had been rendered, the defendant placed on file his motion to arrest the judgment in this cause, for the reasons:

First. That this court have no jurisdiction to try this cause.

Second. That the District Court for Jefferson County had no power to order this cause to be removed to Perry county.

Third. That the County of Perry is not the nearest county to Jefferson, of an adjacent district.

And on the hearing of said motion, the defendant offered proof to show that the County of Washington, in the Seventh Judicial District, is nearer to the County of Jefferson than the County of Perry, which proof was objected to by the plaintiff, and the objection was sustained by the Court, and said testimony excluded, to which the defendant excepted, and said motion to arrest said judgment was overruled by the Court, to which ruling the defendant, by his counsel, excepted, and prays his bill of exceptions to be signed, sealed, and made a part of the record in this case, which is done accordingly.

H. C. WHITMAN, [SEAL.]
WM. V. PECK, [SEAL.]
SIMEON NASH, [SEAL.]

THE STATE OF OHIO, Perry County.

I, John Beckwith, Clerk of the District Court for said county, hereby certify that the foregoing is a copy of the original record in this case.

Given under my hand and the seal of said court, this
[SEAL.] 27th day of December, A. D. 1855.

JOHN BECKWITH, Clerk,
By OVID SPENCER, Deputy.

And afterwards, to wit, on the 20th day of June, 1860, the following procedendo was received from the Supreme Court of Ohio, and duly filed in this court.

THE STATE OF OHIO,
City of Columbus,
Supreme Court of the State of Ohio, of the Term of December, A. D. 1859.

ALEXANDER SKELLY
vs.
THE JEFFERSON BRANCH OF THE STATE BANK OF OHIO.
} In error to the District Court of Perry county.

The cause came on to be heard upon the transcript of the record of the District Court of Perry county, and was argued by counsel, on consideration whereof it is ordered and adjudged by this court, that the judgment of the said District Court be and the same is hereby reversed, with costs, and that a writ of procedendo be sent to said District Court, commanding it to proceed to trial and final judgment between the parties, according to law.

Ordered, that a special mandate be sent to the Court of Common Pleas of Jefferson county, to carry this judgment for costs into execution.

Ordered, that a copy of this entry be certified to the Clerk of the District Court of Perry county, for entry, &c.

I, Jas. H. Smith, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing judgment is truly taken and correctly copied from the journal of said court.

Witness my hand and the seal of said court, this 11th day of April, A. D. 1860.

[SEAL.] JAMES H. SMITH, Clerk,
By H. S. MILLER, Deputy.

STATE OF OHIO,
City of Columbus.

Supreme Court of Ohio.

To the Honorable District Court within and for the County of Perry, Ohio, greeting:

We do hereby command you, that you do proceed, without delay, to trial and final judgment between the parties, according to law, in the case of the Jefferson Branch of the State Bank of Ohio, at Steubenville, *vs.* Alexander Skelly, the petition in error herein and heretofore filed, to the contrary notwithstanding.

Witness, Jas. H. Smith, Clerk of our said Supreme Court of Ohio, at Columbus, this 11th day of April, 1860.

[SEAL.] JAS. H. SMITH, Clerk,
By H. S. MILLER, Deputy.

Clerk's costs, $3 00, paid by plaintiff in error.
Sheriff Blinn, 73 cents.

And afterwards, to wit, on the third day of September, 1860, the following entry was made on the journal of said court, to wit:

On motion, in writing, of the plaintiff by his counsel, of which previous notice, on the 27th of August, was given to defendant's counsel, it is ordered that the rejoinder of the defendant to the plaintiff's replication to the second and third pleas of the defendant to the plaintiff's declaration, be stricken from the record; and it is further ordered, that the said defendant have leave forthwith to rejoin or demur to the plaintiff's said replication; and the said defendant having failed to rejoin or demur to said replication, he is adjudged to be in default, for want of such plea of rejoinder or demurrer to said replication of the plaintiff. And thereupon the defendant in this case, being called, failed to appear by himself or counsel, whereupon, on motion of the plaintiff by his counsel, this case came on to be tried by a jury on the issue made by the defendant's plea of "not guilty," to wit: Hanson Marlow, John B. Delony, James P. Black, Samuel F. Babb, David Wright, James Wright, C. W. Rinehart, John Fuel, David C. Lane, Aloah Richards, Aloah Skinner, and Perry J. Ankney, who being elected, tried, and sworn the truth to speak upon the said issue joined between the parties, after hearing the evidence, arguments of counsel, and charge of the court, retired to deliberate upon their verdict. Whereupon, the jury returned into court their verdict that they found the defendant guilty of the trespass in the said declaration alleged, and that they assess the plaintiff's damages, by reason thereof, to the sum of eight thousand sixty-four dollars and sixty-six cents. Whereupon the plaintiff moved the court for a judgment upon said verdict in his behalf, but the court, on consideration of said motion, being of opin-

ion that the replication of said plaintiff, and the matters therein stated, are no answer in law to the second and third pleas of the said defendant in justification of said alleged trespass, and that said second and third pleas, and the matters therein stated, are in law a bar to the said action, and that for this reason the plaintiff is not, on the record, entitled in law to recover against said defendant the amount found by the jury; it is, therefore, considered that the judgment in this case be and the same is hereby arrested. It is, therefore, considered that the defendant go hence without day, and recover of the plaintiff his costs herein expended, taxed at $

THE STATE OF OHIO, } ss.
Perry county, }

I, Ovid Spencer, Clerk of the District Court for said county, hereby certify that the above and foregoing is a copy of the record in the beforementioned case.

Given under my hand and the seal of said court, this 4th day of September, A. D. 1860.

[SEAL.] OVID SPENCER, Clerk,
By W. S. KELLY, Deputy.

To the Supreme Court of Ohio of the term of November, A. D. 1860.

The Jefferson Branch of the State Bank of Ohio, at Steubenville, Plaintiff in Error,
vs.
Alexander Skelly, Defendant in Error. } Petition in Error.

The said Jefferson Branch of the State Bank of Ohio, by this, its petition in error to the Supreme Court of the State of Ohio, complains of the said Alexander Skelly, and represents to said Supreme Court, that the said Alexander Skelly, at the September term, A. D. 1860, of the Seventh District of the Court of Common Pleas in said State of Ohio, then sitting as a District Court for the County of Perry, in said State, recovered a judgment by the consideration of said court against the said plaintiff in error, in a certain action of trespass then and there pending in said District Court, wherein the said Jefferson Branch of the State Bank of Ohio, at Steubenville, was plaintiff, and the said Alexander Skelly was defendant, a copy of the record of the judgment and proceedings in which case, duly certified, is hereto attached, marked A, and made a part of this petition. And the said Jefferson Branch of the State Bank of Ohio

avers that there is error, to its manifest prejudice, in the said record and proceedings in this, to wit:

1st. In arresting the judgment in said case on the verdict of the jury, and rendering a judgment in said cause in favor of the said Alexander Skelly, when by law of the land the said plaintiff in error was entitled to a judgment on said verdict.

2d. In determining that the replication of the plaintiff in said cause, and the matters therein stated, are no answer in law to the defendant's second and third pleas in justification of said alleged trespass.

3d. In determining that the said second and third pleas in justification of said alleged trespass, and the matters therein stated, are in law a bar to the said action of trespass.

4th. In rendering judgment in said action for said Alexander Skelly, when by the law of the land it ought to have been given for the now plaintiff in error.

And the said plaintiff in error therefore prays that the said judgment may be reversed and the said plaintiff restored to all things he has lost by reason thereof.

S. F. VINTON,
Counsel for Plaintiff in Error.

On the back of said petition is the following endorsement, to wit:

Leave is hereby given to file this petition in error, without notice of the application having been previously made, which notice, in view of the special circumstances, should, in my judgment, be dispensed with.

W. V. PECK, Judge.

Sept. 4, 1860.

And, thereupon a summons in error was issued from our aforesaid clerk's office, which, with the sheriff's return therein, reads in the words and figures following, to wit:

[Summons in Error.]

THE STATE OF OHIO,
City of Columbus.

To the Sheriff of the County of Jefferson.

You are hereby commanded to notify Alexander Skelly that the Jefferson Branch of the State Bank of Ohio, at Steubenville, has filed a petition in the clerk's office of the Supreme Court of the State of Ohio, asking the reversal of a judgment which Alexander Skelly obtained against the Jefferson Branch of the State Bank of Ohio, at Steubenville, at the September Term, A. D. 1860, of the

District Court in and for Perry county, and that unless the said Alexander Skelly attend said Supreme Court, on the 8th day of November, A. D. 1860, said judgment may be reversed. You will make due return of this summons on or before said day.

Witness my hand and the seal of said Supreme Court, this 6th day of September, A. D. 1860.

JAS. H. SMITH,
[SEAL.] Clerk of Supreme Court of the State of Ohio.
By H. S. MILLER, Deputy.

[Sheriff's Return.]

I received this summons September 7th, A. D. 1860, at 1 o'clock P. M., and on the same day I served the within summons on the within-named Alexander Skelly, by delivering to him a true copy of the same.

JOHN MOORE, Sh'ff.

[Sheriff's Fees.]

Service, 35; copy, 25; recording, 25; return, 10; postage, 3; mileage, $1 52—$2 50.

Returned and filed Sept. 10, 1860.

J. H. SMITH, Clerk.

[Judgment.]

And now, to wit: on the day and year first herein above written, upon motion of plaintiffs in error, by their attorney, this cause came on to be heard upon the transcript of the judgment and other proceedings between the said parties in the District Court for the County of Perry, and, also, upon the matters assigned by the said Jefferson Branch of the State Bank of Ohio, at Steubenville, for error, and the same being seen and inspected, and by the Court here now fully understood, it is the opinion of this Court that the 2d and 3d pleas of the said Alexander Skelly to the plaintiff's declaration in said cause are good pleas in bar of said action, and that the replication of the said Jefferson Branch of the State Bank of Ohio to those pleas is, in law, no answer thereto, on the ground that, in the opinion and judgment of this Court, the said 60th section of the act of the General Assembly of Ohio, of the 24th of February, 1845, entitled "An Act to incorporate the State Bank of Ohio and other banking companies," under the provisions of which the said Jefferson Branch was organized, is not a contract, as in that replication is alleged, within the meaning, and entitled to the protection of that clause of the Constitution of the United States which provides, that "no State shall pass any law impairing the obligation of contracts," and that, in the judgment and opinion of this Court, the act of the General Assembly of the State of Ohio, passed April 13,

1852, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon, according to its true value in money," under and in pursuance of the provisions whereof the taxes in the said 2d and 3d pleas set forth and specified were assessed against and collected from said Banking Company, is a valid law, and obligatory on said Banking Company, anything in said 60th section of said Act of the 24th of February, 1845, to the contrary notwithstanding; and that the taxes assessed against said Banking Company in said 2d and 3d pleas specified, were in law valid taxes, and that the said Banking Company was in law bound to pay the same. Wherefore, in the judgment and opinion of this Court, there is no error either in the record or proceedings aforesaid, or in giving the judgment aforesaid; it is, therefore, considered that the judgment aforesaid, in the form aforesaid given, be in all things affirmed and stand in full force and effect; and it is further considered, that the said Alexander Skelly recover against the said Jefferson Branch of the State Bank of Ohio, at Steubenville, his costs in this behalf expended, taxed to dollars. And it is ordered, that a special mandate be sent down to the said District Court to carry this judgment into execution.

And, on motion of the plaintiff's counsel, it is ordered to be further entered of record in this case, that this Court is the highest court of law or equity in the State of Ohio, in which a decision of this suit and of the questions aforesaid could be had, and that the foregoing judgment of affirmance is a final judgment in said suit.

THE STATE OF OHIO, *ss.*

I, James H. Smith, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing is a true copy of the final record in the case of the Jefferson Branch of the State Bank of Ohio, at Steubenville, *vs.* Alexander Skelly.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said Court, at the City of Columbus, this 9th day of November, A. D. 1860.

JAS. H. SMITH, Cl'k.
By H. S. MILLER, Dep.

Clerk's fees, Supreme Court of Ohio, $20 10.
Paid by Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

No. 220.—December Term, 1861.

THE FRANKLIN BRANCH BANK OF THE STATE OF OHIO

vs.

THE STATE OF OHIO.

Brief for Plaintiff in Error.

The single question presented by the record in this case, is, whether the 60th section of the Statute of Ohio, entitled "an act to incorporate the State Bank of Ohio and other banking companies," passed February 24, 1845, constitutes a contract for a fixed mode of taxation; and whether the Statute of Ohio, passed April 5, 1859, entitled "an act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," impairs that contract.

The amount of tax due from this bank, upon the basis fixed by the said 60th section, was $1,216 42 for the year 1859. The amount of tax assessed against this bank, under the said act of February 24, 1855, was $4,076 30 for the same year.

The case turns upon the true construction of the 60th section referred to. If that section contains a contract for a fixed rule of taxation, then the act of April 5, 1859, which substitutes a different rule and a larger tax, is unconstitutional.

This question has been three times before this court, viz: In Knoop vs. The Piqua Bank, 16 Howard, 369; in Dodge vs. Woolsey, 18 Howard, 331; and Mechanics and Traders' Bank vs. Debolt, *ibid.*, 380. In all these cases, this court held that the 60th section was a contract, and that the various State laws, which in those cases changed the rule of taxation fixed by such contract, were void.

Geo. S. Gideon, printer, 511 Ninth street, Washington.

Notwithstanding these repeated decisions, the supreme court of Ohio declines to acquiesce, and a majority of that court—three of the five judges—continue to affirm that the 60th section is not a contract—

Skelly vs. The Jefferson Bank, 9 Ohio State Rep., 606.

After a question has been so repeatedly settled by this court, upon full argument, I do not feel inclined, not to say authorized, to reopen the discussion.

Indeed, after the decision of the first of the three named cases, Knoop vs. Piqua Bank, and the argument of the case next in order, Dodge vs. Woolsey, when the remaining case was called, Mr. Pugh as counsel for defendant, and the undersigned as counsel for plaintiff, respectively declined to argue the question again. Counsel were satisfied that there was no occasion or excuse for further argument. So, too, when the court came to decide this last case, it was disposed of very summarily, as follows:

"Upon our examination of the agreed statement in this case, we find that it is ruled by the case of the Piqua Branch of the State Bank of Ohio vs. Knoop, 16 How., 369, and that of Dodge vs. Woolsey, decided at this term. We, therefore, reverse the decree of the supreme court, and direct a mandate to issue accordingly."

Mechanics and Traders' Bank vs. Debolt, 18 How., 383.

HENRY STANBERY,
Counsel for Plaintiff in Error.

For tax act of April 5. 1859 sec 2.
Swan & Critchfield's Stat. p. 1460

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1861.

THE JEFFERSON BRANCH OF THE STATE BANK OF OHIO, AT STEUBENVILLE,

vs.

ALEXANDER SKELLEY.

Trespass.

This was an action of trespass brought by the plaintiff in error in the court of common pleas for Jefferson county, Ohio, against the defendant, Skelley, for forcibly entering the plaintiff's banking house, and taking and carrying away therefrom certain gold coin, the money of the plaintiff.

To this charge the defendent pleaded—

1st. The general issue plea of not guilty.

2d. For his second and third pleas he pleaded two pleas of justification of the trespass, both of which are substantially to the same effect. They allege that the defendant was the treasurer of the county of Jefferson, Ohio, and that the auditor of that county placed in his hands for collection a tax of $\$5{,}303\frac{70}{100}$, which, in the year 1852, had been duly assessed against the plaintiff for the tax of that year on the plaintiff's property for State, county, and other purposes. That this tax remaining due and unpaid after the time fixed by law for the payment thereof, the defendant, as such collector, as he was in duty bound to do, seized, took, and carried away from the plaintiff's banking-house the sum of $\$5{,}568\frac{88}{100}$ in money, the property of plaintiff, to satisfy said tax and the legal penalty thereon for default of payment thereof, as he lawfully might do, and that this was the supposed trespass in the plaintiff's declaration mentioned.

To these pleas of justification, the plaintiff replied, in substance,

GEO. S. GIDEON, printer, 511 Ninth street, Washington.

that the Jefferson Branch of the State Bank of Ohio, prior to January, 1850, became and was duly incorporated and organized as a body corporate and banking company, under and in conformity with the provisions of an act of the general assembly of the State of Ohio, entitled "An act to incorporate the State Bank of Ohio and other banking companies," passed February 14, 1845; that it accepted the provisions of said act, and assumed the corporate name aforesaid, and that from that time it had carried on the business of banking as a branch of the State Bank of Ohio, and still continued to do so.

That the said banking company, at all times since its organization, had regularly and punctually, semi-annually, on the first Monday of May and November each and every year, as required in the 60th section of said act of incorporation, set off to the State of Ohio six per centum on the profits, deducting therefrom the expenses and ascertained losses of said banking company for the six months next preceding; and that the cashier of said banking company had regularly and punctually, within ten days after setting off said six per centum of said profits, informed the auditor of State of the amount so set off; and that, at all times, when thereto required, had paid the amount so set off to the treasurer of State, on the order of the auditor of State, and that they were then ready and desirous to pay any amount not drawn for by said auditor, whenever the order of the auditor of State therefor to the treasurer should be presented, or the same otherwise demanded, according to law.

That said banking company further alleged, that they had in good faith fulfilled and performed all the duties and requirements of said 60th section of said act of incorporation; and that, by their acceptance of said act, and compliance therewith, a contract arose and was made between the State of Ohio and said banking company, in substance and in effect, according to the provisions of said 60th section of said act, to wit: that the six per centum on the profits so to be divided semi-annually as aforesaid, and set off to the State of Ohio, should be in lieu of all taxes to which said banking company, or the stockholders thereof, on account of the stock owned therein, would otherwise be subject; and that the said assessment and distraint for taxes, as set forth in said plea as justification, was in direct violation of said contract between the State and said banking company, and in conflict with the provisions of the act under and by virtue of which the plaintiff became and is a corporation.

To that replication the defendant make no answer; and judgment, by default, was rendered against the defendant for want of a rejoinder to the replication.

In that state of the pleadings, the case, which had been appealed into the district court from the judgment in the common pleas,

was submitted to a jury on the plea of not guilty, and a verdict rendered for the plaintiff; but judgment on the verdict was arrested by the district court, on the ground that the matter set forth in the plaintiff's replication was in law no answer to the defendant's pleas of justification, and that said pleas of justification were in law a bar to the plaintiff's recovery.

This judgment, at the suit of the plaintiff, was reviewed on error in the supreme court of Ohio; and the judgment of the court below was affirmed by said supreme court, on the ground, as is stated in the judgment of affirmance, that, in the opinion and judgment of that court, the 60th section of said act of incorporation of said State Bank of Ohio and other banking companies, under the provisions of which act the said Jefferson Branch of the State Bank of Ohio was organized, is not a contract between the State and said banking company, within the meaning and entitled to the protection of that clause in the Constitution of the United States which provides, that "no State shall pass any law impairing the obligation of contracts;" and that the act of the general assembly of the State of Ohio, passed April 13th, 1852, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon, according to its true value in money," under and in pursuance to the provisions whereof the taxes in said 2d and 3d pleas set forth and specified were assessed against and collected from said banking company, is a valid law; and obligatory on said banking company, anything in said 60th section of said act of the 24th of February, 1845, to the contrary notwithstanding; and that the taxes assessed against said banking company, in said second and third pleas specified, were in law valid taxes, and that the said banking company was in law bound to pay the same. (See Record, p. 25.)

The case is now before this court, on a writ of error to the supreme court of Ohio, to review the judgment of that court.

The identical question presented by this record, viz., whether the 60th section of the charter of the State Bank of Ohio is a contract between the State and the banking companies organized under that act, exempting them from any taxation other than that provided for in that section, has heretofore been twice before this court for decision, and twice decided, after very elaborate examination of the question by the court in each case.

The first in the order of time is the case of the Piqua Branch of the State Bank of Ohio vs. Knoop, 16 How., 369.

In that case, a tax was assessed upon the property of the Piqua branch, under an act of the legislature of Ohio, passed in the year 1851, which the State attempted to collect by suit.

This court then decided that the 60th section of the bank charter was a contract, and that the bank could not be otherwise taxed

than in conformity to that contract, and that the act of 1851, which was in conflict with that contract, was invalid.

The other case was that of Dodge vs. Woolsey, 18 How., 331.

In that case a tax had been assessed on the Commercial Branch Bank of Cleveland, a branch of the State Bank of Ohio, under the tax act of the 13th of April, 1852, which is the same act under which the tax now in question was assessed.

This court again went into an elaborate investigation of the question in that case, and again decided, that the 60th section of the State bank charter is a contract, and that the banks organized under it are subject to no other taxation, and that the act of 1852 impaired that contract, and was also invalid, so far as it was in contravention to that section of the bank charter.

In view of these decisions, it seems to be a waste of time and effort to go again into a discussion of that question, which has thus become the settled law of this court. I shall, therefore, simply say, that I rely upon those decisions as conclusive of this case.

S. F. VINTON,
Counsel for Plaintiffs in Error.

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SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1861.

THE JEFFERSON BRANCH OF THE STATE BANK OF OHIO, AT STEUBENVILLE, PLAINTIFF IN ERROR,

vs.

ALEXANDER SKELLEY, DEFENDANT IN ERROR.

Supplement to Plaintiff's Brief.

In this case the supreme court of Ohio adjudged and determined:

1st. That the 60th section of the charter of the State Bank of Ohio was not a contract between the State and the bank, within the meaning, and entitled to the protection, of that clause of the Constitution of the United States, which declares, that "no State shall pass any law impairing the obligation of contracts." (Vide printed Record, page 25.)

2d. That the act of the general assembly of Ohio, of the 13th of April, 1852, under which the tax in question was assessed against the bank, was a valid law, and obligatory on the bank, anything in said 60th section of said bank charter to the contrary notwithstanding; and that, consequently, the tax assessed under said act was a valid tax, and the bank was bound to pay the same. (Record, pp. 25 and 26.)

If, in this case, it should be contended by the defendant in error, as it was in the case of the Piqua Branch Bank vs. Knoop, 16 How., 375–6, and again in the case of Dodge vs. Woolsey, 18 How., 331, that the construction put upon the 60th section of the bank charter by the State court ought to be conclusive upon the courts of the United States, the answer to it will be found in the case of the Ohio Life Insurance and Trust Company vs. Debolt, 16 How., 432.

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In that case, Chief Justice Taney laid down the law on that subject in these words, viz:

"Before, however, I speak more particularly of the acts of the legislature of Ohio, which the company rely on as contracts, it is proper to state the principles upon which acts of that description are always expounded by this court.

"It has been contended, on behalf of the defendant in error, (the treasurer of State,) that the construction given to these acts of assembly by the State courts ought to be regarded as conclusive. It is said that they are laws of the State, and that this court always follows the construction given by the State courts to their own constitution and laws. But this rule of interpretation is confined to ordinary acts of legislation, and does not extend to the contracts of the State, although they should be made in the form of a law; for it would be impossible for this court to exercise any appellate power in a case of this kind, unless it was at liberty to interpret for itself the instrument relied on as the contract between the parties. It must necessarily decide whether the words used are words of contract, and what is their true meaning, before it can determine whether the obligation—the instrument created—has or has not been impaired by the law complained of. And in forming its judgment upon this subject, it can make no difference whether the instrument claimed to be a contract is in the form of a law passed by the legislature, or of a covenant or agreement by one of its agents, acting under the authority of the State."

This court has already three times decided that the sixtieth section of the bank charter created a contract between the State and the banks organized under it, and they are now for the fourth time called on to decide the same question. This question first came up for decision in the case of Piqua Branch Bank vs. Knoop, 16 How., 378, at the December term, 1853. The court there held the following language: "We will first consider whether the specific mode of taxation provided in the sixtieth section of the charter is a contract.

"The operative words are, that the bank shall "semi-annually, on the days designated in the fifty-ninth section for declaring dividends, set off to the State six per cent. on the profits, deducting therefrom the expenses and ascertained losses of the company for the six months next preceding, which sum or amount so set off shall be in lieu of all taxes to which such company or the stockholders thereof, on account of stock owned therein, would otherwise be subject."

This sentence is so explicit that it would seem to be susceptible of but one construction. There is not one word of doubtful meaning when taken singly, or as it stands connected with the sentence in which it is used. Nothing is left to inference. The time, the amount to be set off, the means of ascertaining it, to whom it

is to be paid, and the object of the payment, are so clearly stated that no one who reads the provision can fail to understand it. The payment was to be in lieu of all taxes to which the company or stockholders would otherwise be subject. This is the full measure of taxation on the bank. It is in the place of any other tax, which, had it not been for this stipulation, might have been imposed on the company or stockholders."

In that case, the court closed its elaborate opinion in these words: "We are brought to the conclusion that, in the acceptance of the charter on its terms, and the payment of the capital stock under an agreement to pay six per cent. semi-annually on the dividends made, deducting the expenses and ascertained losses in lieu of all taxes, a contract was made binding on the State and on the bank; and that the tax law of 1851, under which a higher tax has been assessed on the bank than was stipulated in the charter, impairs the obligation of the contract, which is prohibited by the Constitution of the United States; and, consequently, that the act of 1851, as regards the tax thus imposed, is void." (16 How., 392.)

In that case Chief Justice Taney, in his separate opinion, concurring in the judgment of the court, uses the following language:

"I think, by the sixtieth section of the act of 1845, the State bound itself, by contract, to levy no higher tax than the one therein mentioned upon the banks which organized under that law during the continuance of their charters. In my judgment, the words used are too plain to admit of any other construction."

At the December term, 1855, this court was again called upon, in the case of Dodge vs. Woolsey, 18 How., 331, to decide whether the 60th section of the bank charter was a contract or not.

The court, in an elaborate and able opinion delivered by Judge Wayne, again decided that this section was a contract, binding on the State and on the bank. They conclude their opinion in these words:

"This case is coincident with that of the Piqua Branch of the State Bank of Ohio vs. Knoop, 16 How., 369, decided by this court in the year 1853. It rules this in every particular; and to the opinion then given we have nothing to add nor anything to take away."

After the decision in the case of Dodge vs. Woolsey, and at the same term of the court, the same question was, for the third time, presented, and decided in the same way, in the case of the Mechanics' and Traders' Bank vs. Debolt, 18 How., 380; and the same question is now presented again for the fourth time.

Upon the strength of these decisions, I shall assume it to be settled law, that the 60th section of the bank charter is a contract between the State and the bank, that is entitled to the protection of that clause of the Constitution of the United States, which declares that "no State shall pass any law impairing the obligation

of contracts." And this presents the question, whether the tax act of the 13th of April, 1852, under which, the record shows, the tax now in question was imposed upon the bank, impairs the obligation of that contract. (Printed Record, page 25.)

In the above mentioned case of Dodge vs. Woolsey, this question in regard to that act was presented to and decided by this court, under a state of facts in every particular the same as the facts of the present case. The record in that case shows that the tax then in question was assessed upon the Commercial Bank of Cleveland, for the year 1853, under the act of the 13th of April, 1852, and that the tax thus assessed was nearly or quite four times greater than the tax of six per cent. on the profits of the bank for that year, as stipulated for in the 60th section of the State Bank charter.

The record in the present case also shows that the tax now in question was assessed under the same act upon the Jefferson Branch Bank for the year 1852, (Record, pages 10, 11, and 25;) and that the tax thus assessed is nearly or quite five times more than the tax of six per cent. upon the profits of the bank for that year.

In Dodge vs. Woolsey, the court in its opinion recite verbatim, in consecutive order, the 60th section of the State Bank charter, and that section of the act of the 13th of April, 1852, under which the tax then in question had been assessed. This recital will be found in 18 How., 359. The State Bank charter will be found in Curwen's Laws of Ohio, 719, and the tax act of April 13, 1852, at page 1,002 of the same book. See sections 1 and 19, of that act.

The court in that case decided that the tax act of the 13th of April, 1852, was in violation of the contract created by the 60th section of the State Bank charter, and that, so far as regarded that bank, the act of 1852, and the tax assessed under it, were void.

This court having for the second time, in the case of Dodge vs. Woolsey, elaborately reviewed the question presented by the present record, in all its aspects, and having then said, in conclusion, that they had nothing to add to, nor anything to take away from the decision in the case of the Piqua Branch Bank vs. Knoop, it would seem to be a useless waste of time to go anew into the discussion of it, further than to say, that each of the three cases heretofore decided rule the present case in every particular.

S. F. VINTON,
For Plaintiff in Erorr.

Supreme Court of the United States.

DECEMBER TERM, A. D. 1861.

THE JEFFERSON BRANCH OF THE STATE BANK OF OHIO, PLAINTIFF IN ERROR,

AGAINST

ALEXANDER SKELLY, DEFENDANT IN ERROR.

ON ERROR TO THE SUPREME COURT OF OHIO.

JAMES MURRAY, ATTORNEY GENERAL OF OHIO, FOR DEFENDANT IN ERROR.

BRIEF.

THE above case, together with the case of the Franklin Branch of the State Bank against the State of Ohio, on error to the Supreme Court of that State, and the case of Francis M. Wright, Auditor, &c, against William F. A. Sill, on appeal from a decree of the Circuit Court of the United States for the Northern District of Ohio, all now pending in this court, are, inasmuch as they involve the same questions, to be heard and considered together.

Before entering upon the discussion of the one question common to all these cases, I propose to dispose of an objection peculiar to the case of Wright, Auditor, &c., against Sill.

In that case, Sill, claiming to be a stockholder in the Summit County Branch of the State Bank of Ohio, and also a non-resident of that State, filed his bill in chancery in the Circuit Court of the

United States for the Northern District of Ohio, claiming that said bank was duly incorporated, organized, and acting under and by virtue of the authority of an act of the General Assembly of the State of Ohio, passed February 24th, A. D. 1845, entitled "An act to incorporate the State Bank of Ohio and other banking companies." (Swan & Critchfield's Revised Statutes of Ohio, page 116.) That, by the sixtieth section of said act, a basis of taxation was agreed upon as the rate to which all banking companies, organized under said act, should be subjected; which rate constituted, within the meaning of the tenth section of the first article of the Constitution of the United States, a contract between the State and such banking company, which neither has power to change, alter or modify, without the consent of the other. It is also alleged that these banks have been at all times ready and willing to pay, and have paid, all taxes legally assessed against them upon the basis prescribed by the sixtieth section of their act of incorporation. It is also claimed that the General Assembly of Ohio, in violation of said alleged contract, on the 5th April, A. D. 1859, passed "An act for the assessment and taxation of property in this State, and for levying taxes thereon according to its true value in money," (S. & C.'s Rev. Stat. 1460), whereby they sought to impose upon such banking companies another and different rate of taxation than that prescribed in the sixtieth section of their charter; rendering that rate much more onerous, and largely increasing the amount which said bank would otherwise have been compelled to pay; and that said act of April 5th, 1859, is in utter violation of said contract between the bank and the State, and is therefore illegal, unconstitutional and void.

The complainant, upon averment that the stock of the bank will be materially depreciated, and its profits largely decreased, by the operation of this act of the 5th of April, 1859, if it is allowed to be enforced, seek relief against it at the hands of the Circuit Court by way of an injunction.

We assert that complainant has full, complete and adequate remedy at law, and therefore is not entitled to an injunction.

That a court of equity will not interfere by injunction where a remedy at law exists, is too clear to admit of dispute.

Warne v. *Morris Canal Co.*, 1 Halst. Ch. Rep. 410.
Mallett v. *Weybosset Bank*, 1 Barb. Rep. 217.
Winnipisiogee Lake Co. v. *Worster*, 9 Foster Rep. 433.
Whittlesey v. *H. P. & F. R. R. Co.*, 23 Connt. Rep. 421.
Whitfield v. *Rogers*, 26 Miss. (4 Cush.) Rep. 84.
Trustees Louisville v. *Gathway*, 1 A. K. Marsh. Rep. 554.
McCoy v. *U. S. Bank*, 5 Ohio Rep. 548.
Moovers v. *Smedly*, 6 John. Ch. Rep. 28.
Wiggins v. *Mayor, &c.*, 9 Paige Ch. Rep. 16.
Wilson v. *New York City*, 4 Smith N. Y. Rep. 675.

To ascertain that there is such legal remedy, we need only refer to the act itself. We there find that it is the duty of the Auditor of State to call on the banks, at stated periods, for certain information; having obtained it, he proceeds to assess against the bank the amount of taxes to which it is liable under said act. On the 20th of Decem ber, the Comptroller is required to draw on the bank, in favor of the Treasurer of State, for the amount so assessed, and it is made the duty of the officers of the bank to pay the draft; but, *in case of their neglect or refusal to do so by the 31st of December, it is made the duty of the Attorney General to enforce payment, by mandamus in the Supreme Court, or civil action in the Superior Court of Franklin county.* Under this law, then, the *only mode* by which payment of the taxes assessed under it against a bank can be enforced, is by *legal proceedings*, giving the bank due notice thereof; giving them their day in court; an opportunity to be heard, to set up any and all matters of alleged defense, have it passed upon by the court, and, if need be, take such judgment for review and rehearing to this court. What more full, complete and adequate remedy could be given a party, aggrieved by the operation of the act of April 5, 1859, than the legal remedy given by the act itself? It seems to me impossible to conceive of any mode by which their rights could be more fully protected.

Are there any averments in this bill, to take the case out of this general rule?

One is, that the Auditor of State has required of the officers of the bank a statement of their business, &c.; that it has been fur-

nished to him under protest, and that he has assessed against the bank the taxes to which it is liable, under the act of April 5, 1859.

Admit it: how does that affect the rights of this complainant? I care not for what purpose the Auditor wanted this statement, whether from curiosity, or as a basis for the assessment of taxes. The State must and does possess a visitatorial power over all its corporations, public as well as private; a right to require all its business transactions to be laid open for the inspection of the public. In any event, the mere fact that the Auditor had demanded and obtained this statement, and had made it a basis for the assessment of taxes, could in no way, shape or manner, affect this complainant; it conferred no additional right on the officers of State; it imposed no additional liability on the bank; it gave no greater power to the one—it neither increased nor lessened the obligation of the other. It is also averred, that complainant has requested the officers of the bank to interfere to protect the rights and franchises of the bank against this assessment and its collection, but that said officers refuse to interfere, and say they will not resort to any legal measures to prevent the same.

I ask, how is it possible to protect the rights of the bank more thoroughly, than by refusing to do anything? How can they take any steps to protect the interests of the bank, until the State, by its proper officers, has brought suit? It may be, that if these bank officers were, in good faith, about to pay the amount of the tax assessed against the bank, under the act of April 5, 1859, without suit, this bill might be sustained, (though even then I greatly doubt it); but no averment of that kind is made; none could be made with even a semblance of truth; for the very last thing these bank officers intend to do, is to pay these assessments, unless compelled to do so by the decision of this court. Suffice it to say, that the averment made in this bill, affords no ground for relief by a Court of Equity; the officers of the bank can take no legal measures to prevent the collection of these taxes, until suit is brought by the State; and there is no allegation even of a design on the part of the officers of the State to bring suit. The complainant avers that he fears these taxes will be collected, unless such collection is restrained by injunction.

This constitutes no ground for an injunction, unless it is *also alleged that the acts against which protection is asked, are not only threatened but will probably be performed:* no such averment is made in this case.

Lutheran Church v. *Maschoff*, 2, Stock Rep. 57.

McArthur v. *Kelly*, 5, Ohio Rep. 139.

Stewart v. *L. M. R. R. Co.*, 15, Ohio Rep. 359.

I have now stated the sum and substance of all the allegations of this bill in chancery, and it seems to me to be conclusively shown that not one of them is sufficient to take the case out of the general rule, which I have shown to be applicable.

The cases heretofore decided by this court in reference to the taxation of these banks, can form no precedent for sustaining the decree of the Circuit Court in this case. In all those cases, the law under which the taxes were assessed provided, that upon failure of the officers of the bank to pay the assessment, the treasurer of the county, without judicial process, without notice to the officers of the bank, without giving them their day in court, opportunity to be heard or to make defence, was authorized to take to his assistance an armed band, and, repairing to the bank, with crowbar and chisel, forcibly break open its vaults, and take therefrom, gold and silver sufficient to pay the amount of the assessment and expenses.

In this case, the taxes can *only* be collected upon judicial process —founded on the judgment of a court having jurisdiction of the parties, and rendered, after the fullest opportunity to the defendants to make every available defence, and have the validity of that defence passed upon, if desired, by the highest judicial tribunal in the land. What claim can there be that the cases are similar? What do you enjoin? not payment of the taxes, for there is no averment of any intention to pay; not their collection, for there is no averment of any steps taken to enforce collection, or even of a design or intention to do so. What can you enjoin, but that which the officers of State have alone the right to do? and that is, the commencement and prosecution of an action at law, to recover the amount of the assessment. The absurdity of an injunction for that purpose is too apparent to require further argument.

In overruling the demurrer of the officers of State to the complainant's bill in chancery, we think the Circuit Court for the Northern district of Ohio, manifestly erred, and therefore we ask its reversal. If our position in this case is sustained, it is an end of the case, so far as the present proceedings are concerned; but if not, then the same question will arise in it, which is presented in the other case, and which I now proceed to state.

Does the 60th section of the act passed February 24, 1845, entitled "an act to incorporate the State Bank of Ohio and other banking companies," constitute a contract, within the meaning of the 10th section of the first article, Constitution of the United States, between the State and the banking companies organized under said act, as to the rate of taxation to which such banking companies shall be subjected?

This precise question has heretofore been submitted to this court, and by it, decided in the affirmative; vide

Piqua Branch &c. v. *Knoop*, 16, How. Rep. 369; three of the justices, who then composed this court, dissenting from the opinion of the majority of the court.

It can hardly be claimed that this one decision—made by a divided court, the judges concurring in the opinion of the majority, only agreeing in the conclusion arrived at, but wholly disagreeing as to the reasons therefor,—can be said to have so far settled this question that it is no longer an open one. It seems to me to be a peculiarly proper case for rehearing and review.

The ground upon which we ask this court to reverse the decision, arrived at by the majority of the judges, in the *Piqua Branch* v. *Knoop*, cited supra, are:

I. That the question is one as to the construction of the Constitution and laws of the State of Ohio, and that it is the duty of this court to follow the construction given by the Supreme Court of that State.

I understand that this proposition is not disputed—it is in any event abundantly sustained by the decisions of this court.

O. L. I. & T. Co. v. *Debolt*, 16 How. Rep. 431.

Elmendorf v. *Taylor*, 10 Wheaton Rep. 150–9.

Swift v. *Tyson*. 16 Peters Rep. 1–18.
Shelby v. *Guy*, 11 Wheaton Rep. 361.
Luther v. *Borden*, 7 How. Rep. 40
Neves v. *Scott*, 13 " " 271.
Raymond v. *Longworth*, 14 How. Rep. 78–9.
U. S. v. *Morrison*, 4 Peters Rep. 137.
Green v. *Neal*, 6 Peters Rep. 291.

It is claimed, however, that upon the question in controversy, the decisions of the Supreme Court of Ohio have not been uniform, and therefore, this court must determine between them. In support of this claim, we are referred to a decision of the Supreme Court of Ohio, in the case of

The State of Ohio v. *Commercial Bank of Cincinnati*, 7, Ohio Rep. 129. We suggest that in that case, the question as to the power of one legislature, to enter into a contract, exempting, either wholly or in part, property from taxation, for a term of years, so as to bind succeeding legislatures, was neither argued nor decided; but even granting to that decision, all the force and effect that is claimed for it, at best, it is but a single decision in favor of the position taken by plaintiffs in error, and was overruled by the same court on the very first occasion that the question was subsequently presented for their consideration, and since that period, the constant and uniform ruling of the Supreme Court ot Ohio, has been in favor of the validity of a tax law, similar to the one now in controversy, as applicable to the banking companies organized under the act of February 24, 1845.

Sandusky City Bank v. *Wilbur*, 7 O. S. Rep. 482.
Skelly v. *Jefferson Branch*, 9 O. S. Rep. 608.
Franklin Branch v. *Ohio &c.*

This uniform construction by the Supreme Court of Ohio, for more than ten years past, in favor of the right of each Legislature, under the constitution of the State, to impose upon the banking companies, organized under the act of February 24, 1845, such rate of taxation as it should deem right and proper,—anything in said act of 1845, to the contrary notwithstanding,—seems to me decisive, and

that it imposes upon this court the duty of adopting and following that construction.

While it is the imperative duty of State Courts, to enter the mandates, and conform to the decisions of this court, in all matter relating to the constitution and laws of the United States, and to follow its construction of that constitution and those laws; we claim that they are under no obligation to enter the mandates, or conform to the decisions of this court, in matters relating tothe construction of the constitution and laws of their own State.

The Supreme Court of the United States, is supreme within its own constitutional sphere of action; beyond that, its decisions, always entitled to respect, yet *cease to bind the judgment of any State court—especially of the Supreme Court of a State, which, within its sphere, is as Supreme as this court is within its.*

Skelly v. *Jefferson Branch*, 9, O. S. Rep. 608, and cases there cited.

It seems to us then, that this court, adopting a principle which it has long since settled, is bound to follow the construction given to the 60th section of the act of February 24, 1845, by the Supreme Court of Ohio; and hold that it does not constitute a contract between the State and banking companies organized thereunder.

II. We claim that the Legislature of Ohio had, under the constitution of 1802, no power to exempt property in whole or in part from taxation, so as to bind subsequent legislatures.

That the act of February 24, 1845, constituted, when banking companies were organized under it, a contract between the State and such companies, is held, under the authority of the principles settled by this court, in

Dartmouth College v. *Woodward*, 4, Wheat Rep. 636; with the principles settled in that case, we find no fault, but we do object, that they have no application to the present case. That a banking company is a private corporation, we admit, as also, that their act of incorporation would, when accepted, constitute a contract between the company and the State, *so far as the legislature had power to grant rights and privileges.* The decision in the Dartmouth college case, was based on the ground that in England, whence our doctrine

as to corporate powers, &c., is derived, the contract is between the King as grantor, and certain natural persons as grantees, and that certain obligation were thereby created, binding upon both the grantor and grantees. That on the part of the grantor, it amounted to an extinguishment of the kings perogative to bestow the same identical franchise on another corporate body, because it would prejudice his prior grant, &c.

Per. Washington J. 4, Wheatons Rep. 657.

It is apparent then, that this grant from the king must be of those things which it was in the power of the king to grant; *exemption from taxation was not one of these powers.* The whole power of taxation was and is in the hands of parliament, and no instance can be found, in the history of English corporations, where an attempt even has been made to grant to any such corporation any privilege in reference to taxation. Such a grant would have been wholly void for want of power in the grantor. *The power to tax is one of the attributes of sovereignty, and is just as inalienable as the right of eminent domain,* and it has never been claimed that any legislature could divest the State—the government, of that right. The right is so inalienable that, after a legislature has granted it to a corporation for a specific purpose, such as building a bridge, road, &c., they may afterwards grant the same right or franchise to another corporation, who may, by virtue of this power of eminent domain, appropriate the very franchise of the former corporation upon making compensation therefor. Can it be claimed that a king has, by grant, power to divest the government of its right of eminent domain, or that a legislature, by any action they have power to take, can divest a State of that right? If a legislature were, by act of incorporation, to attempt to divest the State of the right of eminent domain in one or more counties in the State, would an lawyer regard that action as binding? and yet no distinction exists between the right of eminent domain and the right of taxation; each comprises an essential part of the sovereign power;—in fact of the two, the right of taxation is the most essential; as every limitation of that right tends to cripple the government, and if long continued, would not only paralize all its energies, but result in its total destruction. The same rules which

apply to the one apply also to the other, and there is no principle which forbids the limitation or restriction of the one right, which does not apply, with equal force, to the other.

We find the doctrine fully recognized in England, that, while the king has power to confer on any set of individnals certain rights, such as a corporate name—a common seal—perpetual succession, and the like, yet there are many rights and privileges which the crown, by its perogative, could not, but that parliament alone could confer: of this class is the right of eminent domain granted to railway companies.

Blackstone's Com. (Kerr) Vol. 1, p. 503.

Yet it is held even there, where parliament is omnipotent, that such a grant—an act for the incorporation of railway companies—is not a contract, and should not be so construed.

York &c. R. R. Co. v. *The Queen*, 1, Ellis & B. Rep. 858.

As is well said by Judge Gholson, in his opinion in the case of Skelly v. the Jefferson Branch, 9, O. S. Rep. 624. "*If we are to learn from English authorities that a charter is a contract which a king of England could not revoke, it is unfair not to give the same authorities full effect in ascertaining and deciding what was the proper subjecl matter of such a contract.*"

It seems to us to follow from what has been heretofore stated, that an act of incorporation, when accepted, can only constitute a contract between the grantor and grantees as to those rights, privileges, &c. which it was in the power of the grantor to grant. We have shown that the whole doctrine of contracts, as resulting from an accepted charter, is based on the fact that the King of England had no power to revoke a charter or patent which he had once granted, and which had been accepted and acted upon by the grantees. We have shown that the king never did grant and had no power to grant exemption from taxation, either in whole or in part, any more than he could have divested the government of its right of eminent domain; that any grant of either would have been beyond his power and void; consequently it could have formed no part of any valid contract with his grantees. The legislature of a State then, even if they have succeeded to a certain extent to the perogative of the king, have no power to make a grant of rights and privileges which it was not in the pow-

er of the king to grant, and if their right to make a contract which cannot be revoked by a subsequent legislature is based upon the power of the king of England in similar cases, it must be taken subject to all the restrictions and limitations which apply to his exercise of this power. *It is essential to the rights of the State, in view of any restriction upon their legislative powers, that the distinction between that power and their prerogative power should be well defined and sharply drawn.*

It seems to us clearly to follow, from what has been heretofore said, that the power of one legislature to exempt either in whole or in part any species of property in the State, so as to bind future legislatures by such exemption, did not exist under the constitution of 1802, If further argument were necessary, we need only refer to Sec. 28, Article 8 of that instrument which provides, *in express terms, that all powers not therein delegated should remain with the people.*

Now unless the power of a legislature to exempt property in whole or in part from taxation, so as by such exemption to bind future legislatures, is expressly given in this instrument, or is a necessary incident to some of the powers expressly conferred, it does not exist.

The whole of the legislative powers of the State was by that instrument vested in a House of Representatives, the members whereof were elected by the people annually, and a Senate, the members of which were elected biennially; this body was called a General Assembly, and its time and place of meeting, and its powers, are given in express terms. All the power which this body had was derived from this fundamental law of the land. No legislature derived any power from it predecessor, imparted none to its successor. *Each legislature was in its nature sovereign*—its members were elected directly by the people—derived all their powers from them, and were responsible directly to them; and as the power to tax as well as the power to take private property for public purposes are direct attributes of sovereignty—are in fact sovereign powers, without which no government can exist—it would seem to follow, that no legislature could so limit or restrict their exercise, but that each subsequent one would have the same power over the subject matter, the

same right in regard to it, that any former legislature had possessed.

If one legislature may thus exempt property from taxation, so may another, and another, and thus on until the whole property of the State is exempt: and if a legislature may thus exempt certain kinds of property in whole or in part from taxation, so it may bind all succeeding legislatures as to the rate of taxation to be imposed upon all the property in the State, the farmer who purchased his land from the State, might claim to hold it subject only to the rate of taxation prescribed by the law in force at the time of his purchase, so the merchant with his stock of goods, the mechanic with his tools, the broker with his money, until all sources of revenue were destroyed or so restricted as to utterly demoralize the government.

The Constitution of 1802 clearly asserts the doctrine, that the sovereignty of the State was in the people, and that it was only derived from them as its source, by the different departments of the government, through that instrument, in the manner, with the powers and under the restrictions and limitations therein expressed.

All laws enacted by the legislature, could, under this delegation of power, only remain in force until such time as the people—the source of all power—by their legislators, decreed their repeal. The agents of the people elected for a stipulated period, could bind the people for no longer term than the period of their election.

III. Was the legislature of Ohio, at the time of passing the tax law of April 5th, 1859, and the prior laws changing the rule of taxation prescribed by the 60th section of the act of Feb. 24 1845, inhibited from passing the same.

As we have shown, the power to tax property within the State, could under the constitution, only be exercised by the legislature, and by each legislature only during its existence, for such purposes and to such extent alone, as the exigencies of the government then required.

These reasons and numerous others which will be hereafter stated, require that every presumption should be made against construing the 60th section of the act of February 24, 1845, as designed by

the legislature who passed it, to restrict the power of any future legislature over the whole subject matter.

It is not claimed that said 60th section contains any such restriction in express terms, but it is claimed as has been heretefore stated, that this section constitutes a contract between the banks and the State, which neither has power to change, alter, or modify, without the consent of the other.

Is this the only reasonable construction to be given to this 60th section? If so, *then and then only must such a construction be adopted.*

It is incumbent an those claiming such a construction, to establish it beyond any reasonable doubt, for if two constructions can be given to this section, one of which would enable us to regard it as a contract, and the other, simply as declaratory of a then mode and rule of taxing the property of banking companies organized under said act, the rule of the common law would require us to adopt the latter.

At the time of the passage of this act of February 24, 1845, there was upon the statute book of Ohio *in full force*, an act passed March 7, 1842, (vide Ohio Law, vol 40, page 70) which provided, *that all subsequent corporations, whether possessing banking powers or not, were to hold their charters subject to alteration, suspension and repeal, at the discretion of the legislature.* Now if the legislature in this act of February 24, 1845, had provided in express terms that said act and all rights, privileges, franchise, etc., thereby granted, should not for a given term of years be subject to alteration, repeal or suspension, then it might with some show of reason be claimed, that the prior act of March 7, 1842, was repealed by implication, a mode of repeal however which is never favored, but inasmuch as nothing of that kind is contained in said act, we are bound to presume that it was intended to be made in *all respects, subject to all general acts then in force having referrence to corporations of a similar nature.*

It cannot be said that the existence of this act of 1842, was overlooked at the time of the passage of the act of February 24 1845. (it would matter but little however if such was the fact) for the act of March 7, 1842, was expressly repealed on the 12th of March

A. D. 1845. The fact of the existence of such an act and that the act now in question was passed subject to all its provisions—without the use of any language to make it inapplicable—without making the rights, privileges and franchises granted, unalterable, without repealing the act of 1842 or even saving the act of 1845 from repeal, is conclusive as to the intention of the legislature, in passing this 60th section, to enunciate a (then) present mode and measure of taxing these banks, and not as creating a contract between the State and the banks which could not be altered or repealed.

This presumption is the more readily arrived at from the fact that in cases of this kind the rule is that that intent is to be taken which is the most beneficial to the government. Strict construction is the rule as against the corporation, while the utmost liberality of construction is to be made in favor of the public.

Madden v. *Graham et al* 2, Metcf. Ky. Rep. 82.

Stroubridge Canal v. *Wheeling* 2 Barn. and Ad. Rep. 792.

Vinton Abridgment, tit. Prerogative.

Angel & Ames on Corporation, 28.

That this power of taxation is one of those inalienable rights—one of those attributes of sovereignty, which no legislature could so exercise or restrict, as to bind subsequent legislatures, is, we think, fully held in the following cases. In the case of

Brewster v. *Hough* 17, N. Ham. Rep. 138.

where chief justice Parker holds, "that there is a material difference between the right of a legislature to grant lands or corporate powers or money, *and a right to grant away the essential attributes of sovereignty. These, he adds, do not seem to furnish the subject "matter of a contract.*"

In these views say the Supreme Court of Pennsylvania in

Mott v. *The Pa. RR. Co.* 30 Pa. St. Rep. 31.

we fully concur; and in that case the court hold to the fullest extent the doctrine that no legislature can exempt property from taxation so as to bind any future legislature. They well say, that it is a rule of public law founded on a principle of justice which no government can disregard without violating the right of its citizens, that taxes shall be assessed in such manner that all the citizens may pay their quota

in proportion to their abilities and the advantages they derive from the society; and they cite the express declaration of Baron Puffendorf in his law of nations, B 7, Ch. 6, Sec. 10. This opinion of the Supreme Court of Pennsylvania, is so full—so directly in point, and seems to me to be so conclusive an exposition of the law upon this subject that I ask for it a careful examination by this court.

In addition to these athorities I refer the court on this subject to the cases of,

Skelly v. *Jefferson Branch*, 9 O. St. Rep. 608.
Sandusky City Bank v. *Wilbur*, 7 O. St. Rep. 482.
Debolt v. *I. & T. Co.*, 1 " " 563.
Toledo Bank v. *Bond*, 1 " " 623.
Mechanics &c. Bank v. *Debolt*, 1 " " 591.
M. & R. PR. Co. v. *Husteed*, 3 " " 578.
Norwalk PR. Co. v. *Husteed*, 3 " " 586.
Providence Bank v. *Billings*, 4 Peters Rep. 514.
Charles River Bridge v. *Warren Bridge*, 11 Peters Rep. 420.
West River Bridge v. *Dix*, 6 Howard Rep. 507
The Richmond RR. Co. v. *The Louisa. RR. Co.*, 13 Howard Rep. 71.
Armstrong v. *Treasurer Athens Co.*, 16 Peters Rep. 281.
Mills v. *St. Clair Co.*, 8 Howard Rep. 584.
Butler v. *State of Pennsylvania*, 10 Howard Rep. 402.
People v. *Mayor of Brooklyn*, 4 Comst. " 423.
Russell v. *Mayor of New York*, 2 Denio " 474.
Brick Presbyterian Church v. *City of N. Y.*, 5 Cowan Rep. 538.
Coates v. *Mayor of New York*, 7 Cowan Rep. 585.
The T. & N. M. RR. Co., v. *The Queen*, 1 Ell. & B. Rep. 858.
Fletcher v. *Peck*, 6 Cranch. Rep. 87.
Mack v. *Jones*, 1 Foster " 393.
Vanderbilt v. *Adams*, 7 Cowen Rep. 351.
Maleverer v. *Spink*, 1 Dyer " 36.

By way of further answer to the claim that section sixty of the act of 1845, constituted a contract between the state and the bank as to the rate of taxation to which they were to be subjected; we claim

that it contains no words which can by any fair course of reasoning, be construed into an agreement.

There were no parties at the time *in esse* competent to contract. It was not in the usual form of a charter or letters patent to certain specified individuals to become a body corporate; on the contrary it was a general authority to a given number of natural persons anywhere within a certain district in the state, to become a body corporate for banking purposes, in the mode pointed out by the act. It created no corporation—it imposed no obligation upon any person to become a body corporate, no obligation to commence business within any specific period—none to continue in business for any length of time.

In this respect it is wholly wanting in that which is regarded as essential to constitute a contract within the ordinary defihition of that term.

It is equally wanting in the other essential ingredients of a contract. There is nothing in the shape of a consideration moving from these banking companies to the state, to justify it in relieving them from the same rate of taxation, to which all other property is subjected.

It is not claimed that these banking companies paid the state anything for their alleged contract of exemption; nor is it claimed that it is in any respect a necessary part of the franchise of a company incorporated for banking or any other purpose. By the rule or estimate for taxation prescribed by the 60th section, interest on investments of the bank in certificates of the funded debt of the State of Ohio, were excluded from the estimate of profits upon which the bank was required to set off to the State, six per cent, in lieu of taxes; so that it is in the power of any or all of these banks, to invest the entire proceeds of their business in these certificates of funded debt, divide among their stockholders the interest thereon, and then escape payment of any taxes whatever.

The result of such a course, which in the present aspect of financial affairs is by no means an improbable contingency, is well stated by Judge Sutliff, in the case of the *Sandusky City Bank* v. *Wilbur*, as follows: "Thus the bank with a large capital and doing a lucrative business might not pay, nor the State receive any tax whatever.

And if such a right of exemption should be denied, the only redress for the State, or penalty to the bank, would be, that after a tedious litigation the franchise of the bank might *possibly* be adjudged forfeited. *There is no consideration, not even of mutual promise, or mutual obligation between the parties.*

It would seem therefore that this 60th section of the act of 1845 in several respects, is wholly wanting in those ingredients which are indispensable requisites to a contract.

That this sixtieth section was designed by the legislature to constitute a contract between the State and banking companies organized thereunder, as to the rate of taxation to which they should be subjected during their existence, will not be presumed.

The contract, if one exists, must be contained in the express terms of the act itself, it must appear therein so plainly and obviously as to be beyond doubt, and if any other construction of the terms of the act than that which makes it a contract, can be reasonably given to it, that construction will be adopted.

Providence Bank v. *Billings*, 4 Peters Rep. 561.
Charles River Bridge v. *Warren Bridge*, 11 Peters Rep. 420.
Debolt v. *O. L. I. & T. Co.*, 1 O. St. Rep. 573.
United States v. *Arredonde*, 6 Peters Rep. 738.
Mills v. *St. Clair County*, 8 How. Rep. 581.
Perrine v. *C. & D. C. Co.*, 9 How. Rep. 185.
Cincinnati College v. *The State*, 19 Ohio Rep. 110.
Richmond R. R. Co. v. *Louis'a R. R. Co.*, 13 How. Rep. 81.
Lebanon Bank v. *Mangan*, 4 Casey Rep. 452.
Parker v. *Comst.*, 6 Barr Rep. 411.
Bank Pa. v. *Comst.*, 7 Harris Rep. 152.
Mott v. *Penn. R. R. Co.*, 30 Pa. St. Rep. 24.

Neither does it follow that by the language used by the legislature in this sixtieth section, it was intended or designed to create a permanent measure or system of taxation.

Preble County Bank v. *Russell*, 1 O. St. Rep. 313.
Bank of Colnubia v. *Okley*, 4 Wheaton Rep. 234.
Young v. *Bank of Alexandria*, 4 Cranch Rep. 397.
Crawford v. *Bank of Mobile*, 7 Howard Rep. 297.

B. & S. R. R. Co. v. *Nesbit*, 10 Howard Rep. 396.

Let us for a moment glance at the provisions of this sixtieth section; it is true that each banking company is required semi-annually, to set off to the State, six per centum on its profits for the preceding six months, deducting therefrom expenses and ascertained losses, which per centum is is provided, shall be in lieu all taxes to which it would otherwise be subject; but this section nowhere in express terms provides that this per centum shall be in lieu of taxes, for the period of the existence of the banking company, nor for any other given period, and if it is so held, it can only be by presuming that such was the intention of the legislature; but as we have before shown, no presumption of that kind can be made. On th. contrary, to authorize this court to hold that such was the intention of the legislature, it must be stated in express terms in the law itself, or it must be so clearly apparent that no reasonable doubt can exist as to that intention.

Certainly nothing in the language or context of this section can authorize us to say without any reasonable doubt, that the design of the legislature in authorizing this per centum to be set off to the State in lieu of taxes, was thereby to fix a rate of taxation "unalterable as the laws of the Medes and Persians" which should continue during the whole term of the existence of the bank,—no express language, no apt words even are used to show any such design.

It may be said that we are authorized to presume the intention of the legislature from the fact, that under this law, banking companies were authorized to be formed, and *if* formed, to continued in business, *if* they so desired, for a period of twenty years. I answer, that they were under no obligation to continue business for any length of time, and therefore the rate of taxation to which they should be subjected, was in its very nature wholly uncertain and dependent upon contingencies; and as it constituted no necessary part or incident of the franchise of the companies to be organized, it would seem to be the only reasonable construction of this section, to hold that it was intended simply to enunciate a (then) present rule of taxation, as to a species of property thereafter to be placed upon the tax duplicate, for the taxation of which no previous law provided, and for which it

was their duty to provide; and that there was no intention to create a permanent contract between the State and the banks, as to the only rate of taxation to which the latter should be subjected for a period of twenty years, or so long as the bank should remain in existence.

Inasmuch then as exemption from the rate of taxation to which other property in the State was subject, was a grant of one of the essential attributes of sovereignty, and consequently could not be the subject matter of a contract; and inasmuch as there was no consideration from the banking companies or any of them to the State, for this exemption from taxation, even if one was granted which we deny, and no stipulation for its continuance for any fixed or definite period; but on the contrary, was at the best wholly uncertain and dependent upon contingencies; as well as from the very language of the section itself, which neither from its express terms, nor by reasonable construction, will sustain the interpretation sought to be put upon it. I am brought to the conclusion that there was no valid, legal or binding contract as claimed.

These banking companies are not entitled to relief on the ground that the tax law of April 5, 1859, and preceeding acts of a like character are void, for the reason that they divest vested rights.

This claim can only be sustained in case the court shall be of opinion that 60th section of the act of February 24, 1845, constituted a valid contract as to the rate of taxation to be imposed upon the banking companies organized there under; for as was well and truly said by chief justice Taney, in the announcing the decision of this court in the case of the *Charles River Bridge* v. *Warren Bridge*, 11 Peters Rep. 539.

"It is well settled by the decision of this court that a State law may be retrospective in its character and may divest vested rights, and yet not violate the constitution of the United States, unless it also impairs the validity of a contract."

United States v. *Arredonde*, 6 Peters Rep. 738.

Satterlee v. *Matthewson*, 2 Peters Rep. 413.

Watson v. *Mercer*, 8 Peters Rep. 110.

Webb v. *Dew*, 18 How. Rep. 576.

Webb v. *Dew*, 21 " " 694.

Wilkinson v. *Leland*, 8 Peters Rep. 239.

Leland v. *Wilkinson*, 16 " " 294.

Nor can this contract be implied. The rule is clearly settled, that *in grants by the public nothing can be taken by implication.*

United States v. *Arredonde*, 6 Peters Rep. 738.

Jackson v. *Lamphire*, 3 Peters Rep. 289.

Beatty v. *Knowles*, 4 Peters Rep. 168.

Charles River Bridge v. *Warren Bridge*, 11 Peters Rep. 545.

It the case of the *Providence Bank* v. *Billings Pittman*, 4 Peters Rep. 514, the legislature of Rhode Island had chartered a bank in the usual form, the charter contained *no stipulation* that the State would not impose a tax on the bank, nor any reservation of the right to do so. This court held that the taxing power was of vital importance, and essential to the existence of government; *and that the relinquishment of such a power is never to be assumed. That the whole community has a right "to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the State to abandon it does not appear."*

The case of *Gordon* v. *Appeal Tax Court*, 3 How. Rep. 133, was one in which the State had accepted from a banking corporation, a *bonus*, as a consideration for the franchise granted, and pledged the faith of the State "not to impose any farther tax or burden upon them during the continuance of their charter under this act." It was held that this clause constituted a contract between the corporation and the State, during the existence of the charter under that act, but that if the charter was extended without renewing this promise or pledge, then the power to tax revived.

The court will observe that this case is distinguishable from the one at bar in very many material respects—in its expressed intention, consideration and duration of the exemption—and is not only not any authority against us, but in fact is in our favor.

We ask a careful examination by this court, of the reasoning of Judges Sutliff aud Brinkerhoff, in the case of *the Sandusky City Bank* v. *Wilbur*, 7 Ohio State Reports cited supra; and that of Judge Gholson, in the case of *Skelly* v. *The Jefferson Branch*, also cited supra. To the reasoning of those judges it is impossible to

add anything new, and if it fail to convince this court, further argument on that side of the question would be a waste of time.

In the case of Skelly v. Jefferson Branch, I desire to add one additional point which is presented by the record in that case.

It is, that the bank has not complied with the provisions of the 60th section, so as to entitle it to the exemption claimed. The company is reqnired each six months to "*set off*" to the State six per centum on their profits &c.: now in this case the per centum was regularly ascertained and the auditor of State was notified of the amount, but that amount was not *set off*, it remained with the balance of the funds in the vault of the bank—it was yet a part of them, not separated or distinguished from the balance of the funds in any way: but the amount was simply ascertained by calculation, and an entry made on the books of the bank of a credit in favor of the Auditor of State to that amount. This amount then is not "*set off*," it is not separated—not distinguished from the other funds, as it must be when it is in fact, "*set off*." If within the ten days after the amount is ascertainecl. and before the Auditor is notified, the bank should fail, what becomes of this amount? It goes with the remainder of the funds, into the hands of an assignee, and as the State has no preference over any other depositer, her taxes are sunk with the rest. The very object of the law was to guard against this, to guard against loss to the State by her being made a depositor in the bank.

The intent of the law was, to have the amount of the semi-annual per centum at stated times ascertained, and when ascertained "set apart," separated from all other funds, and distinguished by such act as a separate distinct fund—*the very money of which the State would in any and every event be entitled to have.* This not having been done, the bank is not entitled to claim the benefit of this exemption, even should the court find one to exist. We ask that the judgments of the Supreme Court of Ohio, be affirmed: and that of the Circuit Court be reversed..

JAMES MURRAY,
Attorney General of Ohio.

SUPREME COURT OF THE UNITED STATES.

No. 220.

THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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1 THE STATE OF OHIO, *ss:*

At a term of the supreme court of the State of Ohio, continued and held at the court room of the capitol in the city of Columbus, before the Hon. Jacob Bronkerhoff, chief justice, and Josiah Scott, Metton Sutliff, William V. Peck, and William Y. Gholson, justices, on the ninth day of February, in the year of our Lord one thousand eight hundred and sixty-one, there were, among others, the following proceedings, to wit:

THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO, AT COLUMBUS, *vs.* THE STATE OF OHIO.	In error to the superior court of Franklin county.

Be it remembered that heretofore, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty, came the said plaintiff in error, by Henry Stanbery, esq., her attorney, and filed in the clerk's office of said supreme court a transcript of the record in a certain case wherein said State of Ohio was plaintiff and the said the Franklin Branch of the State Bank of Ohio, at Columbus, was defendant, together with a motion for leave

2 to file a petition in error in said court, with a notice of said motion attached, which read in the words and figures following, to wit:

THE STATE OF OHIO,
Franklin County, ss:

At the superior court of Franklin county, begun and held at the court-house in the city of Columbus, within and for said county, on the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty, before his honor Fitch James Matthews, judge thereof, there were, among others, the following proceedings, to wit:

THE STATE OF OHIO *vs.* THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO, AT COLUMBUS.	Civil action.

Petition.

Be it remembered that on the 17th day of March, A. D. 1860, came the said plaintiff, by Christopher P. Wolcott, its attorney general, and filed in the office of the clerk of said court its petition, which is as follows, to wit: The State of Ohio, Franklin county, superior court. The State of Ohio, plaintiff, against the Franklin Branch of the State Bank of Ohio, at Columbus, defendant. Civil action. Petition. The State of Ohio, plaintiff, by Christopher P. Wolcott, its attorney general, for complaint, against the Franklin Branch of the State Bank

of Ohio, at Columbus, defendant, says, that the defendant is a body corporate, organized by the name and style aforesaid, under
3 the act of the general assembly of the State of Ohio, "to incorporate the State Bank of Ohio and other banking companies, passed twenty-fourth of February, 1845, and that as such body corporate and by virtue of the said act it was engaged in the business of banking at the city of Columbus, at which city it had its office, in the State aforesaid, for one year and more next preceding the first day of May, 1859, and ever since hath been and still is so engaged in the same. That heretofore, to wit, on the tenth day of May, 1859, pursuant to the requirements of an act "for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed the fifth day of April, 1859, the president and cashier of the defendant made out under oath, and returned to the auditor of State a written statement of the amount, as ascertained by the rule prescribed in that act, of notes and bills discounted and purchased by the defendant during the year next preceding the first day of that month, and of all its other monies, effects, and dues of every description, which in the same period it had loaned, invested, or otherwise used or employed with a view to profit, or upon which it had received or was entitled to receive interest, which amount, as so ascertained and stated, constituted in the aggregate a sum of two hundred eighty-nine thousand ninety-
4 nine and $\frac{47}{100}$ dollars, ($289,099^{47}$.) That the rate of taxation for all purposes assessed upon property in the city of Columbus, where defendant had its office and place of business, was for the year 1859 fourteen mills and one-tenth of a mill upon each dollar of valuation as placed on the tax duplicate, and that after the return so made to him as aforesaid, to wit, on the first day of June, 1859, the auditor of State proceeded to assess the amount of taxes which the said rate of taxation applied to the amount so returned by the defendant would yield, and which, as so assessed, the plaintiff avers was four thousand seventy-six and $\frac{30}{100}$ dollars, ($4,076 30,) and that of the said assessment and the amount thereof the auditor of State forthwith thereafter gave notice to the president and cashier of the defendant. That afterwards, and on the twentieth day of December, 1859, the comptroller of the treasury made his official draft upon the said defendant in favor of the treasurer of the State of Ohio for the said sum of four thousand seventy-six and $\frac{30}{100}$ dollars, as and for the taxes assessed upon it, the defendant, for the year 1859, and the said treasurer of State on the same day notified the defendant that he held such draft, and requested as well the defendant itself as its president and cashier to pay the amount thereof into the treasury of the State.

5 The plaintiff further says that on the said twentieth day of December, 1859, by force of the said last mentioned act of the general assembly, and of the proceedings so had as hereinbefore stated, there became and was due from the defendant to the plaintiff, as the taxes of the defendant for the year 1859, the said sum of four thousand seventy-six and $\frac{30}{100}$ dollars, which it was then and there the duty of the defendant to pay into the treasury of the plaintiff; yet the defendant did not on that day, though then specially requested so to do by the treasurer of the plaintiff, nor hath it at any time since paid

any part of the last named sum of money into the treasury of the plaintiff, or otherwise howsoever. Whereupon the plaintiff demands judgment against the defendant for the sum of four thousand seventy-six and $\frac{30}{100}$ dollars, ($4,076 30,) with interest from the twentieth day of December, 1859, and for other proper relief.

C. P. WOLCOTT,
Attorney General.

And on which said petion was the following precipe, to wit:

Precipe.

THE STATE OF OHIO, plaintiff, *against* THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO, AT COLUMBUS, defendant.	Action for recovery of money only.

Issue a summons against the defendant in the above entitled action, to the sheriff of Frankin county, returnable according to law.

6 Indorse "amount claimed four thousand seventy-six and $\frac{30}{100}$ dollars, for which, with interest from the twentieth day of December, 1859, plaintiff will take judgment, if defendant fail to answer."

C. P. WOLCOTT,
Attorney General.

To CLERK *of Superior Court.*

And thereupon there issued from the office of the clerk of said court, directed to the sheriff of Franklin county, Ohio, a writ of summons, which is as follows, to wit:

Summons.

THE STATE OF OHIO,
Franklin county, ss:

To the sheriff of said county, greeting:

You are commanded to notify The Franklin Branch of the State Bank of Ohio, at Columbus, that it has been sued by the State of Ohio, in the superior court of Franklin county, and that unless it answer by the 14th day of April, A. D. 1860, the petition of the said the State of Ohio against it, filed in the clerk's office of said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this summons on the 26th day of March, A. D. 1860.

Witness my hand, and the seal of said court, this 17th day of [SEAL.] March, A. D 1860.

JAMES H. SMITH,
Clerk of the Superior Court of Franklin County,
By T. S. SHEPERD, *Dep.*

Endorsement on summons.

And on which said summons was the following endorsement, to wit: Amount claimed $4,076 30, and interest from the 20th day of Dec., A. D. 1859.

C. P. WOLCOTT, *Attorney General.*

7 And afterwards, to wit, on the 26th day of March, A. D. 1860, came the said sheriff, to whom said summons was directed, and returned and filed the same herein, with his report thereon, which is as follows, to wit:

Shff's ret. on summons.

March 21st, 1860. Served this writ personally on D. W. Deshler, president of the Franklin Branch of the State Bank of Ohio, the within named defendant.

G. W. HUFFMAN, *Sh'ff.*

And afterwards, to wit, on the 21st day of May, A. D. 1860, came the said defendant, by its attorney, and filed herein its answer, which is as follows, to wit:

Answer.

The State of Ohio, Franklin county, superior court.

THE STATE OF OHIO, plaintiff,
against
THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO, defendant. } The answer.

1. The said defendant denies that it is indebted to the plaintiff in the said sum of $4,076 30, or in any other sum for or on account of the taxes of the defendant for the year 1859, or in any other account. 2. That the defendant, as such bank, incorporated under the said act of February 24, 1845, hath from the date of its organization hitherto in all respects complied with the provisions of said act, and especially with the 60th section thereof. 3d. That on the 2nd May, 1859, and on the 7th November, 1859, the same being the days designated in the 59th section of said act of February 24, 1845, for declaring dividends, the defendant did set off to the said plaintiff six
8 per centum on its profits, deducting therefrom the expenses and ascertained losses of the defendant for the six months next preceding the said days respectively, to wit: the sum of $412 28, on the said 2nd May, for the six months next preceding; and the sum of $809 24, on said 7th November, for the six months next preceding said last mentioned day. That within ten days after said respective days, when said sums were so set off, the cashier of the defendant did notify and inform the auditor of State of the amount as set off, and that the same was held subject to the order of the plaintiff or the proper officer of the plaintiff. And the defendant further says that the said sums so respectively set off were computed and ascertained in all respects in conformity with the provisions of said 60th section of said act of February 24, 1845; and that the said defendant hath

continually since the same were so set off held the same, and yet doth hold the same, subject to the order of the plaintiff, or the proper officer of the plaintiff, as and for the full and entire taxes to which the defendant is or was at any time subject or liable for or on account of the taxes for the year 1859.

HENRY STANBERY,
Att. for Defendant.

And afterwards, to wit, on the 14th day of June, A. D. 1860,
9 came the said plaintiff, by its attorney, and filed herein a demurrer, which is as follows, to wit:

Demurrer.

The State of Ohio, Franklin county, superior court.

THE STATE OF OHIO, plaintiff,
against
THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO, defendant. } Demurrers.

1. The plaintiff demurs to the matter firstly pleaded by way of defence in the answer of the defendant, because the same, as therein stated, doth not constitute a sufficient answer to the action of the said plaintiff.

2. The plaintiff also demurs to the matter secondly pleaded by way of defence in the answer of the defendant, because the facts therein stated do not constitute a bar to the action of the said plaintiff.

3d. The plaintiff also demurs to the matter thirdly pleaded by way of defence in the answer of the defendant, because the facts therein stated do not constitute a bar to the action of the said plaintiff; wherefore the plaintiff prays judgment against the defendant, as in its said petition it has before prayed.

C. P. WOLCOTT,
Attorney General.

Continued.

And afterwards, to wit, at the May term of the said court, A. D. 1860, the said cause was continued.

Final entry and judgment.

And now, at this day, to wit, the day and year first herein aforesaid, came said parties, by their respective attorneys, and thereupon this cause came on to be heard upon the demurrer of the plaintiff to the several matters interposed by way of defence in the answer of the defendants, and the court being fully advised in the premises, are
10 of opinion, and doth so rule, that the said answer and several matters therein contained do not constitute, in the law, any defence against the cause of action herein of the plaintiff, (to which opinion and ruling the defendant by its counsel excepted.) Whereupon the defendant, not desiring to answer further, it is considered that the plaintiff ought to recover against the defendant by reason of the premises; and the court, with the assent of the parties, doth pro-

ceed to inquire as to the amount due to the plaintiff from the defendant, upon the matters stated in the petition, and doth find the same to be the sum of four thousand two hundred and sixty-three dollars and eighty cents ($4,263 80) including interest to the first day of this term. It is therefore considered that the plaintiff recover of the defendant the said sum of four thousand two hundred and sixty-three dollars and eighty cents, and also its costs herein expended, taxed at ——— dollars

THE STATE OF OHIO, *Franklin county, ss:*

I, James H. Smith, clerk of the superior court of said county, do hereby certify that the foregoing is truly copied from the [L. S.] complete record of said case in this office. Witness my hand and the seal of said court, this 5 November, 1860.

JAMES H. SMITH, *Clk.*

THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO
vs.
11 THE STATE OF OHIO. } Error.

Notice to the State of Ohio of any application which may be made for leave to file a petition in error in this case, is hereby waived.

C. P. WOLCOTT,
25 Oct'r, 1860. *Attorney General.*

Leave to file petition in error.

And afterwards, to wit, on the twentieth day of November, eighteen hundred and sixty, the following order was made by said supreme court:

"On motion of Henry Stanbery, esq., attorney for plaintiff in error leave is given him to file a petition in error herein."

Petition in error.

And afterwards, to wit, on the day and in the year last above written, came the said plff. in error, by its aforesaid attorney, and filed herein its petition in error, as follows:

THE FRANKLIN BRANCH OF THE STATE BANK OF OHIO
vs.
THE STATE OF OHIO. } Petition in error.

To the supreme court of the State of Ohio.

Your petitioner, the Franklin Branch of the State Bank of Ohio, states that lately in a civil action brought in the superior court of Franklin county, Ohio, by the State of Ohio against your petitioner, a judgment was therein recovered by said plaintiff against your petitioner, on the 24th of September, 1860, for the sum of $4,263 80,
12 and costs, as will more at large appear by a certified transcript of the record thereof, and the pleadings and proceedings therein, hereto attached and made part of this petition. And your petitioner

says that error has intervened to his prejudice in the rendition of said judgment, in this to wit:

1. That the matter set up in the answer of your petitioner as a bar to said action in virtue of the 60th section of the said act of the general assembly of Ohio, entitled "An act to incorporate the State Bank of Ohio and other banking companies," was overruled by said superior court, whereas the same ought to have been sustained as a bar to said action, and to the recovery of the judgment therein.

2. That said judgment ought to have been for the petitioner, on the ground that said tax was void under the constitution of Ohio.

3. For other errors apparent in said record and proceedings.

Wherefore your petitioner prays for leave to file this petition, and that said judgment may be reversed and your petitioner restored to all things your petitioner has lost thereby.

The Franklin Branch of the State Bank of Ohio, by
HENRY STANBERY, *its attorney.*

Order.

13 And afterwards, to wit, on the 29th day of January, A. D. 1861, on motion to the court by Jas. Murray, esq., it is ordered that case No. 325 on general docket be taken out of its order for hearing at an early day.

Judgment.

And now, at this day, to wit, the ninth day of February, one thousand eight hundred and sixty-one, upon the motion of plaintiff in error, by their attorney, this cause came on to be heard upon the transcript of the judgment and other proceedings between the said parties in the superior court of Franklin county, and also upon the matter assigned by the said Franklin Branch of the State Bank of Ohio at Columbus for error, and the same being seen and inspected, and by the court here now fully understood, it is the opinion of this court that the matters and things contained in the answer of the said Franklin Branch of the State Bank of Ohio contained are not sufficient in bar of the said action, and that the demurrer of the State of Ohio thereto is well taken, on the ground that in the opinion and judgment of this court the said 60th section of the act of the general assembly of Ohio of the 24th of February, 1845, entitled "An act to incorporate the State Bank of Ohio and other banking companies," under the provisions of which the said Franklin Branch of the
14 State Bank was organized, is not a contract as in the answer is alleged within the meaning and entitled to the protection of that clause of the Constitution of the United States which provides that no State shall pass any law impairing the obligation of contracts, and that in the judgment and opinion of this court the act of the general assembly of the State of Ohio, passed April 5, 1859, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," under and in pursuance of the provisions whereof the taxes in the said petition of the State of Ohio set forth and specified were

assessed against said banking company is a valid law, and obligatory on said banking company, anything in said 60th section of said act of the 24th of February to the contrary notwithstanding; and that the taxes assessed against said banking company in said petition specified were in law valid taxes, and that the said banking company is in law bound to pay the same, anything in the answer of the defendant to the contrary notwithstanding: wherefore, in the judgment and opinion of this court, there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid. It is therefore considered that the judgment aforesaid, in the form aforesaid
15 given, be in all things affirmed and stand in full force and effect. And it is further considered that the State of Ohio recover against the said Franklin Branch of the State Bank of Ohio at Columbus her costs in this behalf expended, taxed to dollars; and it is further ordered that a special mandate be sent down to the said superior court of Franklin county to carry this judgment into execution. And on motion of the plaintiff's counsel it is ordered to be further entered of record in this case, that this court is the highest court of law or equity in the State of Ohio in which a decision of this suit and the questions aforesaid could be had, and that the foregoing judgment of affirmance is a final judgment in said suit.

THE STATE OF OHIO, *ss:*

I, James H. Smith, clerk of said supreme court, do hereby certify that the foregoing is truly taken and copied from the records of the proceedings of said supreme court of Ohio.

In testimony whereof I do hereto subscribe my name and affix the [SEAL.] seal of said court, at Columbus, this 26th day of March, A. D. 1861.

JAS. H. SMITH, *Clerk S. C.*,
By H. S. MILLER, *Dep'ty.*

16 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of Ohio, greeting:

Because, in the record and proceedings, as also in the rendition of the judgement of a plea which is in the said the Franklin Branch of the State Bank of Ohio, plaintiff, and the State of Ohio, defendant, being a case in error to the superior court of Franklin county, Ohio, before you, or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between the Franklin Branch of the State Bank of Ohio, plaintiff, and the State of Ohio, defendant, wherein was drawn in question the validity of a statute of said State, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, a manifest error hath happened, to the great damage of the said the Franklin Branch of the State Bank of Ohio, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the par-

ties aforesaid in this behalf, do command you, if judgement be
17 therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty.

JNO. McLEAN, Jr.,
Clerk of the circuit court of the United States for the 7th circuit
[L. S.] *and southern district of Ohio.*

18 The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Ohio, wherein the Franklin Branch of the State Bank of Ohio is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Josiah Scott, chief justice of the supreme court of Ohio, this fifth day of April, in the year of our Lord one thousand eight hundred and sixty-one.

JOSIAH SCOTT, *C. J.*

To the Hon'le JAMES MURRAY,
Atto. General of the State of Ohio.